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7
UNITED STATES DISTRICT COURT
 8
SOUTHERN DISTRICT OF CALIFORNIA

10 KIMBERLY ALEKSICK, individually and on behalf of other members of the general public similarly situated.)	CASE NO. 08-CV-59
)	(CLASS ACTION)
12 Plaintiff.)	NOTICE OF MOTION TO REMAND TO STATE COURT
13 v.)	<i>Oral Argument Requested</i>
14)	<i>Document Electronically Filed</i>
15 7-ELEVEN, INC., a Texas Corporation; MICHAEL TUCKER, an individual; and 16 Does 1 through 50, Inclusive.)	Date: March 3, 2008 Time: 8:30 a.m. Dept: 12 Judge: Hon. Napoleon A. Jones, Jr.
17 Defendants.)	
18)	

20 **PLEASE TAKE NOTICE** that on March 3, 2008, at 8:30 a.m., or as soon thereafter as
 21 counsel may be heard, Sullivan & Christiani, LLP for Plaintiff Kimberly Aleksick, shall move before
 22 the United States District Court for the Southern District of California for the entry of an Order
 23 Remanding the action to Imperial County Superior Court on the following grounds:

- 24 1. Notice of Removal is untimely as the original Complaint gave sufficient notice that
 25 the amount in controversy exceeded the Class Action Fairness Act requirements; and
 26 2. Notice of Removal is untimely as "other papers" provided notice of both the meal/rest
 27 period claims and Labor Code section 2699 penalties as early as June 1, 2007.

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1 **PLEASE TAKE FURTHER NOTICE** that counsel for the moving party shall rely upon
2 the accompanying Memorandum of Points and Authorities in Support of Plaintiff's Motion to
3 Remand to State Court, the Declaration of Alison M. Miceli, Esq., the Notice of Lodgement, as well
4 as the exhibits thereto, and all other pleadings and memoranda on file in this matter.

5 **PLEASE TAKE FURTHER NOTICE** that counsel for the moving party requests costs and
6 attorney fees.

7 **PLEASE TAKE FURTHER NOTICE** that counsel for the moving party requests oral
8 argument.

9
10 Dated: January 24, 2008

SULLIVAN & CHRISTIANI, LLP

11 /s/ Alison M. Miceli

12 William B. Sullivan,
13 Alison M. Miceli,
14 Attorneys for Plaintiff,
15 KIMBERLY ALEKSICK

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Attorneys for Plaintiff KIMBERLY ALEKSICK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ALEKSICK, individually and) CASE NO. 08-CV-59
on behalf of other members of the general)
public similarly situated.) (CLASS ACTION)

Plaintiff.

V.

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and
DOES 1-50, Inclusive.

Defendants

CASE NO. 08-CV-59

(CLASS ACTION)

**POINTS AND AUTHORITIES IN SUPPORT
OF PLAINTIFF'S MOTION TO REMAND
TO STATE COURT**

Oral Argument Requested

Document Electronically Filed

Date: March 3, 2008

Time: 8:30 a.m.
Duty: 12

Dept.: 12
Judge: Ho

Judge. Hon. Napoleon A. Jones, M.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 KIMBERLY ALEKSICK, individually and) **CASE NO. 08-CV-59**
11 on behalf of other members of the general)
12 public similarly situated.) **(CLASS ACTION)**
13 Plaintiff,)
14 v.) **POINTS AND AUTHORITIES IN SUPPORT
15 7-ELEVEN, INC., a Texas Corporation;) OF PLAINTIFF'S MOTION TO REMAND
16 MICHAEL TUCKER, an individual; and) TO STATE COURT
17 DOES 1-50, Inclusive.)
18 Defendants) **Oral Argument Requested**
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20) Date: March 3, 2008
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22) Dept.: 12
23) Judge: Hon. Napoleon A. Jones, Jr.**

I. SUMMARY OF ARGUMENT

21 Remand is proper, for each of the following reasons:

- Defendant 7-ELEVEN, INC.'s (hereinafter "7-ELEVEN") Notice of Removal is untimely and in violation of 28 U.S.C. § 1446. Babasa v. Lenscrafters, 498 F.3d. 972 (9th Cir. 2007). Using the damage calculations ***7-ELEVEN itself provides, it admits that*** the *original* Complaint (received by 7-ELEVEN in April 2007) was sufficient to notify 7-ELEVEN that at least "\$8,378.240 (19,000 * 52 * \$8.48)" in Meal/Rest Period claims alone, was sought by Plaintiff.

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- 1 • Of crucial importance, a court must, in measuring the amount in controversy, "assume
2 that the allegations of the complaint are true and assume that a jury will return a verdict
3 for the plaintiff on *all claims* made in the complaint." Kenneth Rothschild Trust v.
4 Morgan Stanley Dean Witter. 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). (Emphasis
5 added). 7-ELEVEN admits, multiple times, that the *original* Complaint claims that 7-
6 ELEVEN was Plaintiff Kimberly Aleksick's (hereinafter "Plaintiff") employer. As this
7 allegation *must* be assumed to be true, and as 7-ELEVEN admits that the Meal/Rest
8 Period claims (which existed within the *original* Complaint) alone result in potential
9 damages over eight million dollars (\$8.000.000). 7-ELEVEN was required to have
10 Removed this matter no later than May 16, 2007. As this did not occur, the instant
11 Notice of Removal is untimely and Remand is mandatory.
- 12 • In addition to 7-ELEVEN's admissions that the amount in controversy on the Meal/Rest
13 Period claims alone are over the Five Million Dollar (\$5.000.000) Class Action Fairness
14 Act (hereinafter "CAFA") requirement, the *original* Complaint alleges (1) Punitive
15 Damages; and (2) Attorneys Fees, both of which must be considered when calculating
16 the amount in controversy. Sanchez v. Wal-Mart Stores, Inc., 2007 WL 1345706 (E.D.
17 Cal. 2007).
- 18 • Finally, in addition to the notice within the *original* Complaint that the amount in
19 controversy was well over the Five Million Dollar (\$5.000.000) CAFA requirement, 7-
20 ELEVEN was subsequently placed on "notice" - on multiple occasions - that "penalties
21 under Labor Code section 2699, *et. seq.*" would be alleged against 7-ELEVEN. As the
22 "notices," which include various attorney correspondence, Labor and Workforce
23 Development Agency (hereinafter "LWDA") letters, and Case Management Statements
24 are properly considered "other papers," 7-ELEVEN's Notice of Removal is untimely
25 and Remand is mandatory.

26 II. **SUMMARY OF FACTS AND PROCEDURAL HISTORY**

27 The instant litigation focuses on a "Wage and Hour" Class Action Complaint. Both the
28 *original* and the First Amended Complaint allege, among other allegations, that 7-ELEVEN acting as

1 an employer - violated the California Labor Code, failed to pay proper Overtime Compensation or
 2 Meal Period Payments, and failed to provide statutorily compliant Itemized Wage Statements.

3 On April 16, 2007, Plaintiff filed her original Complaint. (Please see Exhibit "A"). The
 4 original Complaint brought "Class" allegations and alleged that 7-ELEVEN was the employer for the
 5 entire Class.

6 On June 1, 2007, Plaintiff's counsel sent correspondence, via Certified Mail, to the LWDA
 7 providing written notice of the specific provisions of the California Labor Code believed to have been
 8 violated by 7-ELEVEN, as well as the facts and theories in support. (Please see Exhibit "B"). Plaintiff
 9 claimed that 7-ELEVEN violated Labor Code section 1197.1, acting as either an employer or "other
 10 person." (Please see Exhibit "B"). Importantly, 7-ELEVEN was "carbon-copied" the above letter, via
 11 certified mail. (Please see Exhibit "B").

12 On June 4, 2007, Plaintiff's counsel sent correspondence to 7-ELEVEN's counsel informing
 13 it that Plaintiff was in the process of finalizing the "written notice" necessary under Labor Code
 14 section 2699.3, to claim for penalties not currently at issue in the *original* Complaint. (Please see
 15 Exhibit "C").

16 On July 11, 2007, the LWDA sent "written notice" to both Plaintiff's counsel and 7-ELEVEN,
 17 indicating that it does not intend to investigate the claim, thus allowing Plaintiff to proceed. (Please
 18 see Exhibit "D").

19 On July 16, 2007, Plaintiff's counsel sent correspondence to 7-ELEVEN's counsel advising
 20 it that Plaintiff recently received permission from the LWDA to proceed under Labor Code section
 21 2699, *et seq.* (Please see Exhibit "E"). Within that correspondence, Plaintiff also provided notice of
 22 her intent to Amend the Complaint, as a matter of right, pursuant to Labor Code section 2699.3.
 23 (Please see Exhibit "E").

24 On July 26, 2007, Plaintiff filed and served upon 7-ELEVEN's counsel, a Case Management
 25 Statement stating the intention to file, and the grounds for, the First Amended Complaint. (Please see
 26 Exhibit "F").

27 On September 24, 2007, Plaintiff's counsel sent supplemental written notice, via Certified
 28 Mail, of additional provisions of the California Labor Code believed to have been violated by 7-

1 ELEVEN, as well as the facts and theories in support. (Please see Exhibit "G"). Again, 7-ELEVEN
 2 was "carbon-copied" the above letter, via certified mail. (Please see Exhibit "G").

3 On December 10, 2007, Plaintiff filed and served a second, Case Management Statement,
 4 again stating the intention to file, and the grounds for, the First Amended Complaint. (Please see
 5 Exhibit "H").

6 On December 13, 2007, Plaintiff's counsel mailed and faxed correspondence to 7-ELEVEN's
 7 counsel putting it on notice that a First Amended Complaint was going to be filed. (Please see Exhibit
 8 "I"). Within said correspondence, Plaintiff informed 7-ELEVEN's counsel that the First Amended
 9 Complaint would incorporate, among other theories, a cause of action asserting a violation of Labor
 10 Code section 2699, *et seq.*, against 7-ELEVEN. (Please see Exhibit "I").

11 On December 17, 2007, Plaintiff filed an Ex Parte Application for an Order Compelling a
 12 "Pioneer/Belaire" Notice. (Please see Exhibit "J").

13 On December 18, 2007, Plaintiff's First Amended Complaint was filed by the Court. (Please see
 14 Exhibit "K").

15 On December 21, 2007, the Court continued the Case Management Conference. (Please see
 16 Exhibit "L").

17 On January 9, 2008, 7-ELEVEN filed its Answer to the First Amended Complaint. (Please see
 18 Exhibit "M").

19 On January 10, 2008, 7-ELEVEN filed its Notice of Removal in this matter. (Please see
 20 Exhibit "N").

21 On January 18, 2008, Plaintiff's counsel sent a meet and confer letter to 7-ELEVEN's counsel.
 22 (Please see Exhibit "O"). The meet and confer letter provided case law on-point with the arguments
 23 set forth in the instant motion.

24 On January 22, 2008, 7-ELEVEN's counsel sent a correspondence to Plaintiff's counsel.
 25 (Please see Exhibit "P"). 7-ELEVEN's response failed to address any of the law cited by Plaintiff.

26 III. CONTROLLING LAW

27 A. **CONTROLLING LAW FAVORS REMAND TO STATE COURT**

28 Removal statutes are strictly construed, so as to limit removal jurisdiction. 28 U.S.C. § 1441.

1 Federal courts are courts of limited jurisdiction. Lowdermilk v. U.S. Bank Nat'l Ass'n, 479 F.3d 994
 2 (9th Cir. 2007).

3 The reason for strict construction is to prevent the waste of judicial resources. When a
 4 plaintiff institutes a case in state court, there is a presumption against removal. Doubts as to removal
 5 are resolved in favor of remanding the case to state court. Gaus v. Miles, 980 F.2d 564, 566 (9th Cir.
 6 1992); Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108 (1941) [All doubts and ambiguities
 7 are resolved against removal and in favor of remand].

8 **B. REMOVAL MUST TAKE PLACE WITHIN THIRTY DAYS OF NOTICE OF
 9 SUFFICIENT GROUNDS TO REMOVE**

10 The notice of removal of a civil action or proceeding **shall be filed within thirty**
 11 **days** after the receipt by the defendant, through service or otherwise, of a copy of
 12 the initial pleading setting forth the claim for relief upon which such action or
 13 proceeding is based, or within thirty days after the service of summons upon the
 defendant if such initial pleading has then been filed in court and is not required to
 be served on the defendant, whichever period is shorter. 28 U.S.C. § 1446(b)
 (Emphasis added).

14 If a notice of removal is filed after this thirty-day window, it is untimely and remand to the
 15 state court is therefore appropriate. Babasa, supra, 498 F.3d at 974.

16 "The Class Action Fairness Act of 2005 . . . eliminated the one-year statute of limitations for
 17 removal in 28 U.S.C. § 1446(b) . . . It did not, however, alter the requirement that defendants must file
 18 a 'notice of removal . . . within thirty days after receipt . . . of a copy of an amended pleading, motion,
 19 order or other paper from which it may be first ascertained that the case is one which is or has become
 20 removable.'" Id.

21 Though this revised section limiting time for the filing of a petition for removal of a civil
 22 action to federal court is still procedural in the strict sense of the word, the wording is such that it is
 23 mandatory in character. Burns v. Standard Life Ins., 135 F. Supp. 904 (D.C. Del. 1955).

24 This section respecting removal insofar as the time for removal is concerned is imperative and
 25 mandatory and must strictly be construed and complied with, due to the fact that the law was designed
 26 to restrict the jurisdiction of federal courts. Biscup v. People of State of New York, 129 F. Supp. 765
 27 (W.D. N.Y. 1955).

1 **C. IN MEASURING THE AMOUNT IN CONTROVERSY, "ALL CLAIMS MADE IN
2 THE COMPLAINT" MUST BE PRESUMED TO BE TRUE**

3 When considering the foundation for Removal, a fundamental rule is that all claims made in
4 the complaint must be construed as true, and a presumption must be made that a jury will find for
5 plaintiff on all claims made within the complaint. Notably, *7-ELEVEN acknowledges and cites to this*
6 *rule.* (Please see Exhibit "N", pg. 8, ln. 4-9).

7 "In measuring the amount in controversy, a court must assume that the allegations in the
8 complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in
9 the complaint." Kenneth Rothschild Trust, supra. 199 F. Supp. 2d at 1001; Forever Living Products
10 U.S. Inc. v. Geyman, 471 F. Supp. 2d 980, 986 (D. Ariz. 2006); Alvarez v. Limited Express, LLC,
11 2007 WL 2317125 (S.D. Cal. 2007).

12 Importantly, the above-cited rule applies to **all** complaints, including Plaintiff's *original*
13 Complaint. When all claims within Plaintiff's *original* Complaint are taken as true - including the
14 claim that 7-ELEVEN was Plaintiff's employer - it is clear that the damages sought exceeded the Five
15 Million Dollar amount. (Please see Exhibit "A"). Thus, 7-ELEVEN was required to Remove the
16 *original* Complaint. Because 7-ELEVEN failed to file its Notice of Removal at that time, the instant
17 Notice is untimely.

18 **D. IN MEASURING THE AMOUNT IN CONTROVERSY, PUNITIVE DAMAGES AND
19 ATTORNEYS FEES CLAIMS MUST BE CONSIDERED BY THE COURT**

20 In determining whether a case is Removable - and if so, when - any claims for statutory
21 Attorneys Fees and Punitive Damages must be considered.

22 In Sanchez v. Wal-Mart Stores, Inc., 2007 WL 1345706 (E.D. Cal. 2007), the court held that
23 punitive damages and attorney's fees, if authorized by statute or contract, are part of the calculation
24 for the amount in controversy. In Sanchez, plaintiff filed a class action against defendants in state
25 court alleging violations of California's Unfair Competition Law (hereinafter "UCL") and California's
26 Consumers Legal Remedies Act (hereinafter "CLRA"). Id. Defendants removed the case to federal
27 court under CAFA claiming that the sum of potential compensatory damages, punitive damages,
28 injunctive relief, and attorney's fees would likely exceed \$5,000,000. Id. The court found that because

1 plaintiff also sought attorney's fees under the UCL and the CLRA as well as punitive damages, that
 2 they should still be factored into the amount in controversy. Id. The court explained, "even assuming
 3 a more conservative estimate of compensatory damages, the potential punitive damages and attorney's
 4 fees award, combined with compensatory damages, would satisfy CAFA's amount in controversy
 5 threshold." Id.

6 Here, Plaintiff's *original* Complaint prayed for compensatory damages, injunctive relief,
 7 attorneys' fees and costs, and an award of punitive and exemplary damages. (Please see Exhibit "A").
 8 The *original* Complaint also sought penalties, back pay, restitution damages, and interest. (Please see
 9 Exhibit "A"). In this case, accepting all allegations as true in the *original* Complaint, the sum of these
 10 potential damages clearly exceeded the Five Million Dollar (\$5,000,000) CAFA requirement, as
 11 Plaintiff is claiming on behalf of approximately 5,000 class members. Therefore, the \$5,000,000
 12 amount in controversy was satisfied at the time the *original* Complaint was filed on April 16, 2007.

13 IV. **LEGAL ARGUMENT**

14 7-ELEVEN's Notice of Removal is untimely and is in violation of 28 U.S.C. § 1446(b) and
 15 recent controlling precedent. See Babasa, supra, 498 F.3d. at 972. As set forth below, this matter
 16 should be returned to its proper forum - the California State Court, Imperial County - based upon
 17 several theories, each of which is individually sufficient to serve as foundation for an Order to
 18 Remand.

19 **A. THE NOTICE OF REMOVAL IS UNTIMELY AS THE *ORIGINAL COMPLAINT*** 20 **GAVE SUFFICIENT NOTICE THAT THE AMOUNT IN CONTROVERSY** 21 **EXCEEDED CAFA REQUIREMENTS**

22 7-ELEVEN's Notice of Removal is untimely and is in violation of 28 U.S.C. § 1446(b). It is
 23 undisputed that Plaintiff's Meal/Rest Period claim within the *original* Complaint mirrors the
 24 Meal/Rest Period claim within the First Amended Complaint. (Please see Exhibits A and K). 7-
 25 ELEVEN admits that the potential recovery for the Meal/Rest Period claim alone exceeds the Five
 26 Million Dollar (\$5,000,000) requirement necessary to trigger removal under the CAFA statute. (Please
 27 see Exhibit "N", pg. 9, ln. 16-21).

28

1 Importantly, in measuring the amount in controversy, a court must "assume that the allegations
 2 of the complaint are true and assume that a jury will return a verdict for the plaintiff on *all claims* made
 3 in the complaint." Kenneth Rothschild Trust, supra. 199 F. Supp. 2d at 1001.

4 In arguing that the *original* Complaint did not provide 7-ELEVEN sufficient notice of the
 5 amount in controversy, 7-ELEVEN attempts to assert that they simply did not believe (and did not
 6 *have to* believe) Plaintiff's allegations that 7-ELEVEN acted as Plaintiff's employer. On this
 7 erroneous belief, 7-ELEVEN claims that it was not required to remove the action upon receipt of the
 8 *original* Complaint. Such a position is not only contrary to the above-cited law, it has no legal support.
 9 7-ELEVEN's Notice of Removal is therefore fatally defective as untimely.

10 **1. Removal Must Be Sought Within 30 Days of Notice of Sufficient Grounds**

11 The notice of removal of a civil action or proceeding **shall be filed within thirty** days
 12 after the receipt by the defendant, through service or otherwise, of a copy of
 13 the initial pleading setting forth the claim for relief upon which such action or
 14 proceeding is based, or within thirty days after the service of summons upon the
 defendant if such initial pleading has then been filed in court and is not required to
 be served on the defendant, whichever period is shorter. 28 U.S.C. § 1446(b).
 (Emphasis added).

15 If the case stated by the initial pleading is not removable, a notice of removal may be
 16 filed within thirty days after receipt by the defendant, through service or otherwise,
 17 of a copy of an amended pleading, motion, order or other paper from which it may
 first be ascertained that the case is one which is or has become removable, except that
 18 a case may not be removed on the basis of jurisdiction conferred by section.

19 If a notice of removal is filed after this thirty-day window, it is untimely and remand to the state
 20 court is appropriate. Babasa, supra. 498 F.3d at 974.

21 **2. In Determining "Sufficient Grounds" For Removal, The Presumption Must be**
Made That a Jury Will Return a Verdict On All Claims Within the Complaint,
and That All Claims are True

24 "In measuring the amount in controversy, a court must assume that the allegations in the
 25 complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in
 26 the complaint." Kenneth Rothschild Trust, 199 F. Supp. 2d at 1001; Forever Living Products U.S.,
 27 supra, 471 F. Supp. 2d at 986; Alvarez, supra, 2007 WL 2317125. Importantly, 7-ELEVEN - within

1 its Notice of Removal - *acknowledges the above law*, stating that in order to determine the amount in
 2 controversy, the Court "must assume that allegations in the complaint are true." (Please see Exhibit
 3 "N", pg. 8, ln. 4-9).

4

5 **3. Based Upon 7-ELEVEN's Own Factual Representations Within Its Notice of**
Removal, It Cannot Be Disputed that Plaintiff's Original Complaint Provided
"Sufficient Grounds" For 7-ELEVEN to Have Removed the Matter In May 2007

7 Succinctly, 7-ELEVEN's own factual representations, set forth within its Notice of Removal,
 8 establish that the Five Million Dollar (\$5,000,000) requirement to remove under CAFA was exceeded
 9 by the claims within Plaintiff's *original* Complaint. Specifically, 7-ELEVEN **admits** that the
 10 Meal/Rest Period claims alone, as set forth within the First Amended Complaint, "would amount to
 11 \$8,378,240 (19,000 * 52 * 8.48)." (Please see Exhibit "N", pg. 9, ln.20-21).

13 Even a cursory review of the *original* Complaint and the First Amended Complaint show that
 14 the factual allegations mirror each other (in fact, they are *identical*, with the exception of one cited
 15 IWC Wage Order). (Please see Exhibits "A" and "K").

17 Within its Notice of Removal, 7-ELEVEN admits that the Meal/Rest Period claim within the
 18 First Amended Complaint would establish damages which exceed the five million dollar requirement:

19 Looking at Plaintiff's meal and rest break claim, assuming that the putative class
 20 members were not paid the statutorily required one-hour of pay for each week during
 21 the year prior to the commencement of the case, ***the potential damages on this claim***
would amount to \$8,378,240 (19,000 * 52 * 8.48). (Please see Exhibit "N", pg. 9,
 22 ln. 16-21). (Emphasis added).

23 As foundation for the above representation, 7-ELEVEN repeatedly cites to specific paragraphs
 24 within Plaintiff's First Amended Complaint as support that the Five Million Dollar CAFA requirement
 25 has been met.

26 However, 7-ELEVEN somehow fails to inform the Court that the very paragraphs cited from
 27 the First Amended Complaint also exist within the *original* Complaint! In fact, any reference to this

1 fact would have rendered the Notice of Removal facially and fatally deficient.

2 With respect to the Meal/Rest Period issue, the allegations within the First Amended
3 Complaint are set forth as follows:

4 14. This action involves questions of law and fact common to the class in that
5 Plaintiff is bringing this action on behalf of a class of Defendants' current and
6 former employees who were and/or are improperly denied mandated meal
7 and rest periods, overtime compensation, statutorily compliant pay stubs, and
8 were and/or are improperly required to purchase work uniforms with their
9 own wages. The subject matter of this action both as to factual and legal
10 matters is such that there are questions of law and fact common to the class
11 which predominate over questions affecting only individual members,
12 including, among other violations, the following:

13 A. Statistically, one hundred percent (100%) of the class
14 members were not "authorized and permitted" to take their
15 legally mandated meal and rest periods, and were not
16 provided the legally mandated payment for not receiving
17 relieved meal and rest periods

18 46. California Labor Code § 226.7(a) states that "No employer shall require any
19 employee to work during any meal or rest period mandated by an applicable
20 order of the Industrial Welfare Commission."

21 47. Under applicable state law, employees who work more than five (5) hours a
22 day are entitled to a meal period of at least thirty (30) minutes, and a second
23 meal period of at least thirty (30) minutes if they work more than ten (10)
24 hours in a day. (Labor Code § 512(a).)

25 48. Unless the employee is relieved of all duty during a 30 minute meal period,
26 the meal period shall be considered an "on duty" meal period and counted as
27 time worked. Title 8, California Code of Regulations Section 11070(11)(A)
and (B), also known as Wage Order 4.

49. An employer who fails to provide meal or rest periods as required by an
applicable Wage Order must pay the employee one additional hour of pay at
the employee's regular rate of pay for each workday that the meal or rest
period was not provided. (Labor Code § 226.7(b); IWC Wage Orders 1-2001
through 13-2001, 15-2001.)

50. During the course of her employment, Plaintiff and other employees were
required by Defendants to work through their lunches and perform work
during their meal and rest periods, and therefore, Plaintiff and other members
in her class were denied relieved and off-duty meal and rest periods.

51. Defendants willfully failed and refused to pay Plaintiff and other employees
one additional hour of pay at their regular rate of pay for each workday that
a meal or rest period was not provided as required by Labor Code Section
226.7. (Please see Exhibit "K").

1 The *original* Complaint provided substantively the same exact language (in fact, the *only*
 2 difference is the citation to a different IWC Wage Order), as set forth below:
 3

- 4 13. This action involves questions of law and fact common to the class in that Plaintiff is bringing this action on behalf of a class of Defendants' current and former employees who were and/or are improperly denied mandated meal and rest periods, overtime compensation, statutorily compliant pay stubs, and were and/or are improperly required to purchase work uniforms with their own wages. The subject matter of this action both as to factual and legal matters is such that there are questions of law and fact common to the class which predominate over questions affecting only individual members, including, among other things the following:
- 5 A. Statistically, one hundred percent (100%) of the class members were not "authorized and permitted" to take their legally mandated meal and rest periods, and/or were not provided the legally mandated payment for not receiving relieved meal and rest periods
- 6 21. California Labor Code § 226.7(a) states that "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."
- 7 22. Under applicable state law, employees who work more than five (5) hours a day are entitled to a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30) minutes if they work more than ten (10) hours in a day. (Labor Code § 512(a).)
- 8 23. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. Title 8, California Code of Regulations Section 11010(11)(C) also known as Wage Order 1.
- 9 24. An employer who fails to provide meal or rest periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the meal or rest period was not provided. (Labor Code § 226.7(b); IWC Wage Orders 1-2001 through 13-2001, 15-2001.)
- 10 25. During the course of her employment, Plaintiff and other employees were required by Defendants to work through their lunches and perform work during their meal and rest periods, and therefore, Plaintiff and other members in her class were denied relieved and off-duty meal and rest periods.
- 11 26. Defendants willfully failed and refused to pay Plaintiff and other employees one additional hour of pay at their regular rate of pay for each workday that a meal or rest period was not provided as required by Labor Code Section 226.7. (Please see Exhibit "A").

1 The requirement that a removing party look to the allegations within the complaint itself was
 2 recently reiterated by the 9th Circuit Court of Appeals in Babasa, supra, 498 F.3d. at 975. In
 3 confirming the duty to remove at first notice, the appellate court held as follows:
 4

5 Indeed, quite aside from the Bruinsma letter, a fair reading of the complaint alone is
 6 probably enough to establish more than \$5 million is at stake. Plaintiffs alleged seven
 7 causes of action, including failure to pay overtime compensation. Lenscrafters'
 8 lowest estimate of the number of class members was 4,500. If each employee worked
 9 just one hour of overtime per week without receiving overtime compensation at \$10
 per hour, another low estimate, damages would run to almost \$10 million over the
 four years covered by the complaint for that single claim, without considering civil
 penalties.

10 *Id.*, fn. 2.

11 Here, the *original* Complaint specifically alleges four separate Labor Code violations. (Please
 12 see Exhibit "A"). The *original* Complaint further alleges that the class of present and former
 13 employees is believed to be approximately 5,000 employees. (Please see Exhibit "A"). In its Notice
 14 of Removal, 7-ELEVEN admits that the Class would actually be more than 3 times larger, and cites
 15 a class size of 19,000. (Please see Exhibit "N").

16 As set forth below, a simple calculation of any one of the separate Labor Code violations
 17 clearly establishes a damages amount over Five Million Dollars (\$5,000,000):
 18

19 a. **Labor Code Section 226.7 Meal Period Violations**

20 The *original* Complaint alleges a violation of Labor Code section 226.7, where 7-Eleven failed
 21 to provide the one-hour wage due where a 30 minute Meal Period was not provided. (Please see "A").
 22 The class size is listed at 5,000. (Please see Exhibit "A"). Using the formula addressed within Babasa,
 23 and using the "low estimates," the calculation would be as follows:
 24

25 **5000** (class size) * **\$6.75** (one meal period payment per week) * **200** (number of weeks within
 26 four year claim period, absent 2 week vacations) = **\$6,750,000.00**

1 Even more clearly, using 7-ELEVEN's admission that the class size would be 19,000, the
 2 calculation would be as follows:

3 ***19,000*** (class size) * ***\$6.75*** (one meal period payment per week) * ***200*** (number of weeks within
 4 four year claim period, absent 2 week vacations) = ***\$25,650,000.00***

5 Given the above analysis, it is clear that the Meal Period claim alone would exceed the Five
 6 Million Dollar (\$5,000,000) amount.

7 **b. Labor Code Section 226 Claim**

8 Labor Code section 226 requires certain information to be accurately provided on the "Itemized
 9 Wage Statements," which accompany each employee's paycheck. Section 226 allows for damages -
 10 in the form of penalties - that total \$4,000 and requires the payment of Attorneys Fees to a successful
 11 claimant. Using the formula addressed within Babasa, the calculation would be as follows:

12 ***5000*** (class size) * ***\$4,000.00*** (penalty amount) = ***\$20,000,000.00***

13 Even more clearly, using 7-ELEVEN's admission that the class size would be 19,000, the
 14 calculation would be as follows:

15 ***19,000*** (class size) * ***\$4,000.00*** (penalty amount) = ***\$76,000,000.00***

16 Again, it is clear that a calculation, using the allegations within the *original* Complaint, would
 17 exceed Five Million Dollars (\$5,000,000).

18 **c. Overtime Claim**

19 Finally, Plaintiffs' *original* Complaint alleged Overtime violations. (Please see Exhibit "A").
 20 Using the formula addressed within Babasa, the calculation would be as follows:

21 ***5000*** (class size) * ***\$10.00*** (1 hour overtime rate per week) * ***200*** (number of weeks within four
 22 year claim period, absent 2 week vacations) = ***\$10,000,000.00***

1 Even more clearly, using 7-ELEVEN's admission that the class size would be 19,000, the
 2 calculation would be as follows:
 3

4 ***19,000*** (class size) * ***\$10.00*** (1 hour overtime rate per week) * ***200*** (number of weeks within
 5 four year claim period, absent 2 week vacations) = ***\$38,000,000.00***

6 Simple mathematical calculations show that the claims contained within the *original* Complaint
 7 exceed the amount in controversy required for federal jurisdiction. Therefore, 7-ELEVEN should have
 8 ascertained, upon receiving Plaintiff's *original* Complaint, that the case was removable on April 16.
 9 2007.

10 **B. THE NOTICE OF REMOVAL IS UNTIMELY AS "OTHER PAPERS" PROVIDED 7-
 11 ELEVEN NOTICE OF BOTH THE MEAL/REST PERIOD CLAIMS AND THE
 12 SECTION 2699 PENALTIES AS EARLY AS JUNE 1, 2007**

13 7-ELEVEN's Notice of Removal is also untimely - by at least 7 months - because 7-ELEVEN
 14 has been continuously provided "other papers" that put them on notice of the extent of Plaintiff's
 15 claim. These "other papers" include attorney correspondence, LWDA letters, and Case Management
 16 Statements. These "other papers" were provided to 7-ELEVEN as early as June 1, 2007. (Please see
 17 Exhibit "B").

18 "The Class Action Fairness Act of 2005 . . . eliminated the one-year statute of limitations for
 19 removal in 28 U.S.C. § 1446(b). It did not, however, alter the requirement that defendants must file
 20 a "notice of removal . . . within thirty days of receipt . . . of a copy of an amended pleading, motion,
 21 order or *other paper* from which it may be first ascertained that the case is one which is or has become
 22 removable." Babasa, *supra*, 498 F.3d at 975. (Emphasis added).

1 In this case, even if the *original* Complaint was somehow ignored, 7-ELEVEN received
 2 multiple "other papers" - as early as June 1, 2007 - which would have apprised 7-ELEVEN that this
 3 matter was removable.
 4

5 1. June 1, 2007 LWDA Letter, Carbon-Copied to 7-ELEVEN

6 On June 1, 2007, Plaintiff's counsel sent, via Certified Mail, correspondence to the LWDA
 7 providing "written notice" of the specific provisions of the California Labor Code believed to have
 8 been violated by 7-ELEVEN, as well as the facts and theories in support. (Please see Exhibit "B").
 9
 10 7-ELEVEN was "carbon-copied" the above letter, via certified mail.

11 Within said correspondence, Plaintiff claimed that 7-ELEVEN violated Labor Code section
 12 1197.1, acting as either an employer or "other person." Section 1197.1 provides in pertinent part, as
 13 follows:

14 Any employer or other person acting either individually or as an officer, agent or
 15 employee of another person, who pays or causes to be paid to any employee a wage
 16 less than the minimum fixed by an order of the commission shall be subject to a civil
 17 penalty as follows: (1) For any initial violation that is intentionally committed, one
 18 hundred dollars (\$100) for each underpaid employee for each pay period for which
 19 the employee is underpaid. (2) For each subsequent violation for the same specific
 offense, two hundred dollars (\$250) for each underpaid employee for each pay period
 for which the employee is underpaid regardless of whether the initial violation is
 intentionally committed.

20 As the Statute of Limitations for Penalties is one-year, and given the normal policy of pay
 21 periods every 2 weeks, the "claim amount" under Labor Code section 2699 would total \$5,100.00
 22 (\$100 for initial pay period, \$200 for each 25 subsequent pay periods). Thus, calculating the
 23 "amount in controversy" would be as follows"

24 **$5000 \text{ (class size)} * \$5100.00 \text{ (total penalties)} * 1 \text{ (year)} = \$25,500,000.00$**

25 As this amount exceeds the Five Million Dollar (\$5,000,000) CAFA requirement, 7-
 26 ELEVEN was aware in June 2007 that this case was removable.
 27
 28

1 **2. June 4, 2007 Letter to 7-ELEVEN Defense Counsel**

2 On June 4, 2007, Plaintiff's counsel sent correspondence to 7-ELEVEN's counsel informing
 3 them that Plaintiff was in the process of finalizing the "written notice" necessary under Labor Code
 4 section 2699.3, to claim for civil penalties in this action. (Please see Exhibit "C"). Plaintiff's letter
 5 also requested a response from 7-ELEVEN as to whether they wished to be carbon-copied on this
 6 Notice. (Please see Exhibit "C").

7 Similar to 7-ELEVEN's admissions contained within its Notice of Removal, even one
 8 claimed penalty - given the class being either 5,000 or 19,000 - would have led to damages in excess
 9 of Five Million Dollars (\$5,000,000). Accordingly, a fair reading of the June 4, 2007
 10 correspondence alone is probably enough to establish that more than \$5,000,000 was at stake
 11

12 **3. July 16, 2007 Letter to 7-ELEVEN Defense Counsel**

13 On July 16, 2007, Plaintiff's counsel sent correspondence to 7-ELEVEN's counsel advising
 14 them that Plaintiff recently received permission from the LWDA to proceed under Labor Code
 15 section 2699, *et seq.* (Please see Exhibit "E"). Within said correspondence, Plaintiff's counsel also
 16 provided notice of Plaintiff's intent to Amend the Complaint, as a matter of right, pursuant to Labor
 17 Code section 2699.3.

18 Again, on July 16, 2007, 7-ELEVEN was put on notice of Plaintiff's intent to Amend the
 19 Complaint to assert, among others, a Labor Code section 2699 claim. Because this July 16, 2007
 20 correspondence can be considered an "other paper" for removal purposes, 7-ELEVEN should have
 21 removed the case within thirty (30) days from said date. Because 7-ELEVEN failed to remove the
 22 case, its present removal effort is untimely.

23 **4. July 26, 2007 Case Management Statement**

24 On July 26, 2007, Plaintiff filed and served upon 7-ELEVEN a Case Management Statement

1 stating the intention to file, and the grounds for, the First Amended Complaint. (Please see Exhibit
 2 "F"). Specifically, the Case Management Statement provides as follows:

3 Plaintiff recently received permission from the California Labor and Workforce
 4 Development Agency authorizing Plaintiff to file a claim under Labor Code section
 5 2699. Accordingly, Plaintiff will be amending her Complaint to add a cause of
 6 action under section 2699, naming Defendant 7-ELEVEN, Inc. as both an
 "employer" and as a "person."

7 It is evident from Plaintiff's July 26, 2007 Case Management Statement that Plaintiff fully
 8 intended to file a First Amended Complaint in this action. Moreover, the Case Management
 9 Statement serves as an "other paper," which 7-ELEVEN could ascertain that the case is one which
 10 is or has become removable. Because 7-ELEVEN had notice of Plaintiff's intent to claim civil
 11 penalties under Labor Code section 2699, it should have filed its Notice of Removal at this time.
 12 instead of waiting until January 10, 2008 to do so.

13 **5. September 24, 2007 Letter to 7-ELEVEN Defense Counsel**

14 On September 24, 2007, Plaintiff's counsel sent, via Certified Mail, to the LWDA
 15 supplemental written notice of additional, specific provisions of the California Labor Code believed
 16 to have been violated by 7-ELEVEN, as well as the facts and theories in support. (Please see Exhibit
 17 "G"). 7-ELEVEN was also "carbon-copied" the above letter, via certified mail. (Please see Exhibit
 18 "G").

21 Labor Code section 2699(f) provides, in pertinent part, as follows:

22 For all provisions of the code except those for which a civil penalty is
 23 specifically provided, there is an established civil penalty for a violation of
 24 these provisions, as follows:

25 (1) If, at the time of the alleged violation, the person does not
 26 employ one or more employees, the civil penalty is five-
 27 hundred dollars (\$500).

28 (2) If, at the time of the alleged violation, the person employs
 one or more employees, the civil penalty is one-hundred dollars

1 (\$100) for each aggrieved employee per pay period for the
 2 initial violation and two-hundred dollars (\$200) for each
 3 aggrieved employee per pay period for each subsequent
 violation.

4 Because Plaintiff sought additional relief, in the form of Labor Code section 2699 penalties.
 5 the September 24, 2007 letter was sufficient to put 7-ELEVEN on notice that the amount in
 6 controversy exceeded federal jurisdictional requirements.
 7

8 **6. December 10, 2007 Case Management Statement**

9 On December 10, 2007, Plaintiff filed and served a second Case Management Statement, again.
 10 stating the grounds for the First Amended Complaint. (Please see Exhibit "H"). The description of
 11 the case is set forth as follows:
 12

13 Plaintiff's First Amended Complaint will allege . . . Labor Code violations (2699,
 14 et seq.) . . . Plaintiff also brings a representative action under the Private Attorneys
 General Act (Labor Code section 2699, et seq.) for the underlying Labor Code
 15 violations. Plaintiff seeks individual and Class economic damages, attorney's fees
 and costs, interest, applicable Labor Code section 2699 penalties, punitive damages,
 16 restitution, and injunctive relief.

17 From Plaintiff's Case Management Statement, it is clear Plaintiff is asserting Labor Code
 18 section 2699 violations and is also claiming other damages for 7-ELEVEN's alleged misconduct. The
 19 Case Management Statement, in and of itself, puts 7-ELEVEN on notice of the various claims being
 20 asserted as well as the requested relief sought. This "other paper" is sufficient for 7-ELEVEN to
 21 determine that the case is one which is or has become removable. Therefore, 7-ELEVEN's failure
 22 to file its Notice of Removal within thirty (30) days of receipt of Plaintiff's Case Management
 23 Statement can only be construed as a waiver of this right.
 24

25 In light of the above, it is clear 7-ELEVEN was provided notice of the extent of Plaintiff's
 26 claims as early as April 16, 2007, with the filing of the original Complaint, then again through several
 27 attorney correspondence sent to 7-ELEVEN specifically addressing Plaintiff's intent to file a First
 28

Amended Complaint and to claim civil penalties under Labor Code section 2699, through LWDA letters, and finally with the filing of two separate Case Management Statements in this matter.

V. CONCLUSION

Based on the foregoing reasons, this Court should grant Plaintiff's Motion to Remand to the Imperial County Superior Court.

Dated: January 24, 2008

SULLIVAN & CHRISTIANI, LLP

/s/ Alison M. Miceli

William B. Sullivan,
Alison M. Miceli,
Attorneys for Plaintiff,
Kimberly Aleksick

1 William B. Sullivan [CSB No. 171637]
 2 Alison M. Miceli [CSB No. 243131]
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 3 2330 Third Avenue
 San Diego, California 92101
 4 (619) 702-6760 * (619) 702-6761 FAX

5 Attorneys for Plaintiff KIMBERLY ALEKSICK

6

7

8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KIMBERLY ALEKSICK, individually and) **CASE NO. 08-CV-59**
 11 on behalf of other members of the general)
 public similarly situated.) **(CLASS ACTION)**
 12 Plaintiff.)
 13 v.)
 14)
 15 7-ELEVEN, INC., a Texas Corporation:)
 MICHAEL TUCKER, an individual; and)
 Does 1 through 50, Inclusive.)
 16 Defendants.)
 17) Date: March 3, 2008
 18) Time: 8:30 a.m.
 19) Dept.: 12
) Judge: Hon. Napoleon A. Jones, Jr.

20

21 I, Alison M. Miceli, declare as follows:

- 22 1. I am an attorney licensed to practice law before this Court and am employed with the
 23 law firm of Sullivan & Christiani, LLP, attorneys of record for Plaintiff in the above-
 24 captioned matter. I make this declaration in support of Plaintiff's Motion to Remand
 25 to State Court.
- 26 2. I am personally familiar with the facts set forth in this declaration and if called to
 27 testify as a witness I could and would do so.

28 **ORIGINAL**

3. A true and correct copy of the Complaint dated April 16, 2007 is attached hereto as Exhibit "A".
 4. A true and correct copy of Plaintiff's counsel's correspondence to the Labor and Workforce Development Agency dated June 1, 2007 is attached hereto as Exhibit "B".
 5. A true and correct copy of Plaintiff's counsel's correspondence dated June 4, 2007 is attached hereto as Exhibit "C".
 6. A true and correct copy of the Labor and Workforce Development Agency's correspondence dated July 11, 2007 is attached hereto as Exhibit "D".
 7. A true and correct copy of Plaintiff's counsel's correspondence dated July 16, 2007 is attached hereto as Exhibit "E".
 8. A true and correct copy of Plaintiff's Case Management Statement dated July 26, 2007 is attached hereto as Exhibit "F".
 9. A true and correct copy of Plaintiff's counsel's supplemental correspondence to the Labor and Workforce Development Agency dated September 24, 2007 is attached hereto as Exhibit "G".
 10. A true and correct copy of Plaintiff's Case Management Statement dated December 10, 2007 is attached hereto as Exhibit "H".
 11. A true and correct copy of Plaintiff's counsel's correspondence dated December 13, 2007 is attached hereto as Exhibit "I".
 12. A true and correct copy of Plaintiff's Ex Parte Application for an Order Compelling a "Pioneer/Belaire" Notice dated December 17, 2007 is attached hereto as Exhibit "J".
 13. A true and correct copy of Plaintiff's First Amended Complaint dated December 18, 2007 is attached hereto as Exhibit "K".
 14. A true and correct copy of the Case Management Order dated December 21, 2007 is attached hereto as Exhibit "L".

15. A true and correct copy of Defendant 7-ELEVEN's Answer to the First Amended Complaint dated January 9, 2008 is attached hereto as Exhibit "M".
 16. A true and correct copy of Defendant 7-ELEVEN's Notice of Removal dated January 10, 2008 is attached hereto as Exhibit "N".
 17. A true and correct copy of Plaintiff's counsel's correspondence dated January 18, 2008 is attached hereto as Exhibit "O".
 18. A true and correct copy of Defendant 7-ELEVEN's counsel's correspondence dated January 22, 2008 is attached hereto as Exhibit "P".

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 24th day of January 2008.

/s/ Alison M. Miceli

Alison M. Miceli
Declarant

1 William B. Sullivan [CSB No. 171637]
2 Alison M. Miceli [CSB No. 243131]
SULLIVAN & CHRISTIANI, LLP
3 2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

5 Attorneys for Plaintiff KIMBERLY ALEKSICK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

20 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that Plaintiff KIMBERLY ALEKSICK hereby lodges the following
22 documents, in support of the Motion to Remand to State Court, as follows:

23 Exhibit "A" - A true and correct copy of the Complaint dated April 16, 2007;

Exhibit "B" - A true and correct copy of Plaintiff's counsel's correspondence to the Labor and
Workforce Development Agency dated June 1, 2007;

26 Exhibit "C" - A true and correct copy of Plaintiff's counsel's correspondence dated June 4,
27 2007;

ORIGINAL

Exhibit "D" - A true and correct copy of the Labor and Workforce Development Agency's correspondence dated July 11, 2007;

Exhibit "E" - A true and correct copy of Plaintiff's counsel's correspondence dated July 16, 2007;

Exhibit "F" - A true and correct copy of Plaintiff's Case Management Statement dated July 26, 2007;

Exhibit "G" - A true and correct copy of Plaintiff's counsel's supplemental correspondence to the Labor and Workforce Development Agency dated September 24, 2007;

Exhibit "H" - A true and correct copy of Plaintiff's Case Management Statement dated December 10, 2007;

Exhibit "I" - A true and correct copy of Plaintiff's counsel's correspondence dated December 13, 2007;

Exhibit "J" - A true and correct copy of Plaintiff's Ex Parte Application for an Order Compelling a "Pioneer/Belaire" Notice dated December 17, 2007;

Exhibit "K" - A true and correct copy of Plaintiff's First Amended Complaint dated December 18, 2007;

Exhibit "L" - A true and correct copy of the Case Management Order dated December 21, 2007;

Exhibit "M" - A true and correct copy of Defendant 7-ELEVEN's Answer to the First Amended Complaint dated January 9, 2008;

Exhibit "N" - Defendant 7-ELEVEN's Notice of Removal dated January 10, 2008;

Exhibit "O" - Plaintiff's counsel's correspondence dated January 18, 2008; and

Exhibit "P" - Defendant 7-ELEVEN's correspondence dated January 22, 2008.

Dated: January 24, 2008

SULLIVAN & CHRISTIANI, LLP

/s/ Alison M. Miceli

William B. Sullivan,
Alison M. Miceli,
Attorneys for Plaintiff,
KIMBERLY ALEKSICK

EXHIBIT A

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Attorneys for Plaintiff KIMBERLY ALEKSICK

SUPERIOR COURT
IMPERIAL COUNTY
JOSE O. GUILLEN, CLERK
BY MONICA PEREZ
DEPUTY CLERK

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL**

KIMBERLY ALEKSICK, individually and
on behalf of other members of the general
public similarly situated.

CASE NO. 80-00000

(CLASS ACTION)

COMPLAINT FOR:

1. VIOLATION OF LABOR CODE;
(CLASS ACTION) and
2. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION
17200 (CLASS ACTION)

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and
DOES 1-50, Inclusive.

Defendants.

COMES NOW Plaintiff KIMBERLY ALEKSICK, (hereinafter "Plaintiff"), and alleges for her Complaint as follows:

1. This Court has jurisdiction over this matter in that all parties are residents of the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. This class action is brought pursuant to Section 382 of the California Code of Civil Procedure. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The monetary damages sought on behalf of each and every member of the class and as aggregate class damages exceed those jurisdictional limits as well. However, the claims of individual class members, including Plaintiff, are under \$75,000.00 jurisdictional threshold for federal court. Furthermore, there is no

1 federal question at issue, as Wage and Hour protections and remedies related thereto are based
 2 solely on California Law and Statutes, including the Labor Code, Civil Code, Code of Civil
 3 Procedure, and Business and Professions Code.

- 4 2. Venue is proper before this Court in that some or all of the events, acts and happenings as alleged
 5 herein occurred within the jurisdiction of the above-entitled court.
- 6 3. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's
 7 injuries occurred in Imperial County in the State of California.
- 8 4. At all relevant times herein, Plaintiff KIMBERLY ALEKSICK (Hereinafter "Plaintiff") was and
 9 is an individual residing in Imperial County in the State of California.
- 10 5. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
 11 Defendant 7-ELEVEN, INC. (hereinafter "Defendant Employer"), was and is a Texas
 12 Corporation doing business in Imperial County in the State of California.
- 13 6. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
 14 Defendant MICHAEL TUCKER (hereinafter "TUCKER") was and is residing and doing
 15 business in Imperial County in the State of California.
- 16 7. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named
 17 herein as DOES 1 through 50, inclusive. Accordingly, Plaintiff will seek leave of court to amend
 18 this Complaint to allege their true names and capacities after the same have been ascertained.
- 19 8. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
 20 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in
 21 so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and
 22 in doing the actions mentioned below was acting within the course and scope of his or her
 23 authority as such agent, servant, partner, and employee with the permission and consent of the
 24 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said Defendants.
 25 Wherever it is alleged herein that any act or omission was done or committed by any specially
 26 named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same
 27 act or omission was also done and committed by each and every Defendant named as a DOE,
 28 both separately and in concert or conspiracy with the named Defendant or Defendants.
9. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,

1 including DOES 1 through 50, are, and at all times herein mentioned were, either individuals.
 2 sole proprietorships, partnerships, registered professionals, corporations, alter egos, or other legal
 3 entities which were licensed to do and/or were doing business in the County of San Diego, State
 4 of California at all times relevant to the subject matter of this action.

5 **CLASS ACTION ALLEGATIONS**

- 6 10. As more specifically set forth below, Plaintiff is bringing this action on behalf of an ascertainable
 7 class and a well-defined community of interest among the class members. Code of Civil
 8 Procedure Section 382; Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 426, 470.
 9 Throughout her employment, Plaintiff and her former co-workers were knowingly denied and/or
 10 refused mandated relieved meal and rest periods, in violation of Labor Code Section 512.
 11 Defendant Employer and TUCKER ("Defendants") further failed to provide Plaintiff and her
 12 former co-workers one hour of pay at their regular rate of pay for each day the meal and rest
 13 periods were not provided, in violation of Labor Code Section 226.7, despite such knowledge.
 14 Moreover, Plaintiff and other employees of Defendants regularly worked in excess of eight (8)
 15 hours a day and/or forty (40) hours a week without receiving appropriate overtime compensation.
 16 Further, Plaintiff and other employees of Defendants were required to purchase uniforms using
 17 their own monies, in violation of Labor Code section 2802. Additionally, Plaintiff did not
 18 receive itemized wage statements ("pay-stubs") which were compliant with the provisions of
 19 Labor Code section 226.
 20 11. Plaintiff brings this action on the grounds that she and other similarly situated employees
 21 employed by Defendants were and are improperly denied earned overtime compensation,
 22 mandated wages resulting from missed meal and rest periods, improperly required to purchase
 23 work uniforms with their own wages, and improperly issued statutorily non-compliant pay-stubs.
 24 Say-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319. The class of present and
 25 former employees is believed to number approximately five thousand (5000.)
 26 12. The approximately 5000 member class is ascertainable via their experience as present or past
 27 employees of Defendants.
 28 13. The class members share a community of interest and an injury in fact as Defendants have
 violated California compensation laws, thereby depriving the class members of money earned

1 by them.

2 14. This action involves questions of law and fact common to the class in that Plaintiff is bringing
3 this action on behalf of a class of Defendants' current and former employees who were and/or
4 are improperly denied mandated meal and rest periods, overtime compensation, statutorily
5 compliant pay stubs, and were and/or are improperly required to purchase work uniforms with
6 their own wages. The subject matter of this action both as to factual and legal matters is such that
7 there are questions of law and fact common to the class which predominate over questions
8 affecting only individual members, including, among other things the following:

9 A. Statistically, one hundred percent (100%) of the class members were not "authorized and
10 permitted" to take their legally mandated meal and rest periods, and/or were not provided
11 the legally mandated payment for not receiving relieved meal and rest periods. 100% of
12 the class members were required by Defendants to purchase work uniforms using their
13 own wages. 100% of the class members did not receive statutorily compliant pay-stubs
14 during the operative class period.

15 B. The duties and responsibilities of the class members Plaintiff is representing were similar
16 and comparable. Any variations in job activities between the individual class members
17 are legally insignificant to the issues presented by this action since the central facts
18 remain, to wit, Plaintiff and the other class members were improperly denied the
19 mandated meal and rest periods, overtime compensation, pay-stubs, and were improperly
20 required to purchase work uniforms using their own wages.

21 14. The class on whose behalf the action is brought is so numerous that joinder of all parties
22 individually would be impractical. Plaintiff is bringing this action on behalf of approximately
23 5000 current and/or former employees of Defendants who share a common or general interest.
24 and it would be impracticable for those current or former employees to bring the action
25 individually.

26 15. Plaintiff's claims in this action are typical of the class Plaintiff is generally representing. Plaintiff
27 and other members in the class were required and instructed by Defendants to perform work
28 during their mandated meal and rest periods and were not provided the mandated relieved and
off-duty meal and rest breaks. Defendants further failed to provide Plaintiff and other members

1 in her class one hour of pay at their regular rate of pay for each day the meal and rest periods
2 were not provided, in violation of Labor Code Section 226.7. Defendants further failed to pay
3 overtime compensation to Plaintiff and other class members for work performed in excess of 8
4 hours a day and/or 40 hours a week, in violation of Labor Code Section 510. Defendants further
5 failed to provide Plaintiff and other class members statutorily compliant pay-stubs in accordance
6 with Labor Code Section 226. Defendants further required Plaintiff and other class members to
7 purchase work uniforms using their own wages. Plaintiff seeks proper compensation and
8 restitution on behalf of herself and other members in the class for the foregoing irregularities.

- 9 16. Plaintiff can fairly and adequately protect the interests of all the members of the class she is
10 representing in this action. Plaintiff's experience and knowledge of her former employers' Wage
11 and Hour practices and its policy regarding Meal and Rest periods, Overtime compensation,
12 issuing pay-stubs, and employee uniform purchases, in addition to Plaintiff's familiarity with the
13 job duties of the class members she is representing, entitle her to adequately and fairly represent
14 the class.
- 15 17. Plaintiff has satisfied the three prong "community of interest" requirement in California Code
16 of Civil Procedure Section 382. Specifically, and as set forth above, (a) this action involves
17 predominant common questions of law or fact in that Plaintiff brings this action on behalf of the
18 approximately 5000 member class who were denied overtime compensation mandated relieved
19 meal and rest periods, and required wages under Labor Code Section 226.7 and Title 8, California
20 Code of Regulations Section 11010(11)(C) also known as Wage Order 1 and therefore, like
21 Plaintiff, were improperly compensated, (b) Plaintiff's claims and damages are typical of the
22 class Plaintiff represents in that, as mentioned above, Plaintiff seeks on behalf of herself and the
23 class members she represents wages for failure to provide them the required meal and rest
24 periods, including required wages under Labor Code Section 226.7 and Title 8, California Code
25 of Regulations Section 11010(11)(C), and (c) Plaintiff's experience and knowledge of her former
26 employer's Wage and Hour practices and its policy regarding meal and rest periods, in addition
27 to Plaintiff's familiarity with the job duties of the class members she is representing, entitle her
28 to adequately and fairly represent the class.

1 **FACTUAL BACKGROUND**

- 2 18. In or about 2005, Plaintiff commenced working in a position titled by Defendants as "Sales
 3 Associate." Plaintiff's employment with Defendants continued until her involuntary termination
 4 on February 20, 2007. Throughout her employment with Defendants, Plaintiff performed her job
 5 in a capable and competent manner, and was commended for doing so. Throughout her
 6 employment with Defendants, both Defendants exercised control over the wages, hours, and/or
 7 working conditions of Plaintiff and her fellow employees, and both Defendants possessed the
 8 right to terminate Plaintiffs' employment.
- 9 19. Plaintiff and other members in her class were required and instructed by Defendants to perform
 10 work during their mandated meal and rest periods and therefore were not provided the mandated
 11 relieved and off-duty meal and rest breaks, in violation of Labor Code Sections 512 and 226.7
 12 and Title 8, California Code of Regulations Section 11010(11)(C) also known as Wage Order 1.
 13 Plaintiff and other members in her class were not provided one hour of pay at their regular rate
 14 of pay for each day the meal and rest period was not provided, in violation of Labor Code Section
 15 226.7. Plaintiff and other members in her class were not compensated for work performed in
 16 excess of 8 hours and day and/or 40 hours a week. Plaintiff and other members in her class were
 17 not provided statutorily compliant itemized wage statements ("pay-stubs"). Plaintiff and other
 18 members in her class were required by Defendants to purchase and clean work uniforms using
 19 their own wages.

20 **FIRST CAUSE OF ACTION**
 21 **Violation of Labor Code - Class Action**
 22 **(By The Class Against All Defendants)**

- 23 20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 above, as though fully set
 24 forth herein.
- 25 21. California Labor Code § 226.7(a) states that "No employer shall require any employee to work
 26 during any meal or rest period mandated by an applicable order of the Industrial Welfare
 27 Commission."
- 28 22. Under applicable state law, employees who work more than five (5) hours a day are entitled to
 29 a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30)

- 1 minutes if they work more than ten (10) hours in a day. (Labor Code § 512(a).)
- 2 23. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall
3 be considered an "on duty" meal period and counted as time worked. Title 8, California Code
4 of Regulations Section 11010(11)(C) also known as Wage Order 1.
- 5 24. An employer who fails to provide meal or rest periods as required by an applicable Wage Order
6 must pay the employee one additional hour of pay at the employee's regular rate of pay for each
7 workday that the meal or rest period was not provided. (Labor Code § 226.7(b); IWC Wage
8 Orders 1-2001 through 13-2001, 15-2001.)
- 9 25. During the course of her employment, Plaintiff and other employees were required by Defendants
10 to work through their lunches and perform work during their meal and rest periods, and therefore.
11 Plaintiff and other members in her class were denied relieved and off-duty meal and rest periods.
- 12 26. Defendants willfully failed and refused to pay Plaintiff and other employees one additional hour
13 of pay at their regular rate of pay for each workday that a meal or rest period was not provided
14 as required by Labor Code Section 226.7.
- 15 27. California Labor Code § 226 states, in part, that each pay period, Defendants shall provide its
16 employees an accurate Itemized Wage Statement, showing (in part) the gross wages earned and
17 the total hours earned by each employee.
- 18 28. During the course of her employment, Plaintiff and other employees were not provided statutorily
19 compliant Itemized Wage Statements ("pay-stubs") by Defendants.
- 20 29. As a direct result of Defendants' willful failure and refusal to (a) provide the mandated meal or
21 rest period or pay one additional hour of pay at the regular rate of pay for each workday that a
22 meal or rest period was not provided, and (b) failure to comply with Labor Code section 226,
23 Plaintiff and other employees have suffered injury, loss and harm all to their damages in a sum
24 according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back
25 pay (or penalty), and prejudgement interest, and the payment of one hour of pay at the regular rate
26 of pay, for each day the Meal or Rest period was not provided.
- 27 30. California Labor Code § 510(a) states that, "Eight hours of labor constitutes a day's work. Any
28 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
workweek and the first eight hours worked on the seventh day of work in any one workweek shall

be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

31. During the course of her employment, Plaintiff and other employees were not compensated at one and one half (1½) times their regular rate of pay for hours worked in excess of 8 hours a day and/or 40 hours a week. As a result, Plaintiff and other employees have suffered injury, loss and harm all to their damages in a sum according to proof.
 32. Labor Code section 2802(a) states that, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”
 33. During the course of her employment, Plaintiff and other employees were required by Defendants to purchase, using their own funds, custom pants, shirts, and shoes as part of their “work uniforms.” Additionally, Plaintiff and other employees were required to clean all or part of their “work uniforms.” Plaintiff and other employees were not reimbursed by Defendants for these expenditures.
 34. Plaintiff has incurred and continues to incur legal expenses and attorneys’ fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this Complaint when the amounts are more fully known.

SECOND CAUSE OF ACTION
Violation of Business and Professions Code §17200 - Class Action
(By The Class Against All Defendants)

35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth herein.
 36. Plaintiff is an ex-employee and direct victim of Defendants' illegal business acts and practices referenced in this complaint, and has lost money as a result of such practices, and is suing both in her individual capacity and on behalf of former or current employees of Defendants who share a common or general interest in the damages as a result of the illegal practices. Specifically, Plaintiff is bringing this claim on behalf of Defendant Employer's current and former employees who are/were improperly denied mandated relieved meal and rest periods and required wages

under Labor Code Section 226.7, denied overtime compensation under Labor Code Section 510, denied statutorily compliant pay-stubs under Labor Code Section 226, and required to purchase and clean uniforms using their funds, a violation of Labor Code Section 2802. The class of present and former employees is believed to be approximately 5000 members.

37. The approximately 5000 member class is ascertainable via their experience as present or past employees of Defendant Employer. The members share a community of interest, and an injury in fact, as Defendant Employer has violated California compensation laws, thereby depriving the class members of money earned by them. Based on the facts set forth above, it would be impracticable to proceed in individual actions.
38. Plaintiff has suffered an injury in fact pursuant to Business and Professions Code Section 17204, and has lost money as a result of Defendant Employer's illegal practices, in that she was improperly denied Wages in violation of Labor Code Section 226.7, throughout her employment with Defendant Employer.
39. Plaintiff is bringing this action on behalf of an ascertainable class, who share a community of interest, pursuant to Business and Professions Code Section 17203 and Code of Civil Procedure Section 382, who share a common or general interest in the damages as a result of the illegal practices, in that those individuals on whose behalf the action is brought have also lost money as a result of Defendants' practices, by denying them proper payment of Wages under Labor Code Section 226.7, denying them overtime compensation under Labor Code Section 510, denying them statutorily compliant pay-stubs under Labor Code Section 226, and requiring them to purchase and clean uniforms using their funds, a violation of Labor Code Section 2802, and that it would be impracticable to proceed in as an individual plaintiff action.
40. As set forth above, during the course of Plaintiff's employment, Defendants failed and refused to properly pay Plaintiff, and other employees, mandated meal and rest periods and one hour of pay at the employees' regular rate of pay for each day the meal and rest periods were not provided. (Labor Code Sections 226.7, 512; Title 8, California Code of Regulations Section 11010(11)(C).) Defendants failed and refused to properly pay Plaintiff, and other employees overtime compensation for hours worked in excess of 8 hours a day and/or 40 hours a week. (Labor Code Section 510.) Defendants failed and refused to provide Plaintiff, and other

1 employees statutorily compliant pay-stubs. (Labor Code Section 226.) Defendants improperly
 2 required Plaintiff and other employees to purchase and clean work uniforms using their funds.
 3 (Labor Code section 2802.)

- 4 41. California Business and Professions Code § 17200 *et seq.*, prohibits any unlawful, unfair, or
 5 fraudulent business act or practice.
- 6 42. Plaintiff's allegations herein are based upon the business acts and practices of the Defendants.
- 7 43. Defendants' acts and practices as described herein above are unlawful, in that they violate the
 8 California Labor Code.
- 9 44. As a direct result of Defendants' unlawful business acts and practices, Plaintiff, and other
 10 employees, have been denied wages earned, and have therefore been damaged in amount to be
 11 proven. Accordingly, Plaintiff prays for restitution and injunctive damages in an amount to be
 12 proven.
- 13 45. Plaintiff is informed and believes, and on that basis alleges, that the unlawful business practices
 14 alleged above are continuing in nature and are widespread practices engaged by Defendants.
- 15 46. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against
 16 Defendants, to enjoin them from continuing to engage in the illegal conduct alleged herein.
- 17 47. On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.
- 18 48. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
 19 presently unaware of the precise amount of these expenses and fees and prays leave of court to
 20 amend this Complaint when the amounts are more fully known.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff on her own behalf and on behalf of the members of the class and the
 23 general public, prays for judgment as follows:

- 24 1. For an order certifying the proposed class;
- 25 2. Upon the First Cause of Action, for compensatory damages according to proof as set forth in
 26 California Labor Code § 226, California Labor Code § 226.7, California Labor Code § 510, and
 27 California Labor Code § 2802, for failing to provide statutorily compliant itemized wage
 28 statements ("pay-stubs"), failing to provide overtime compensation for hours worked in excess

1 of 8 hours a day and/or 40 hours a week, denying mandated meal and rest periods and other
 2 wages resulting from failure to count work employees performed during meal breaks as time
 3 worked, and for improperly requiring employees to purchase work uniforms using their own
 4 funds:

5. Upon the First Cause of Action, for waiting time penalties according to proof pursuant to
 California Labor Code § 203;
6. Upon the First Cause of Action, for penalties pursuant to California Labor Code §§ 558, 1199,
 and Title 8, California Code of Regulations Section 11010 Section 20.
7. For compensatory damages in an amount to be proven;
8. For lost back pay in an amount to be proven;
9. On behalf of the ascertainable class, for a permanent injunction against Defendant Employer
 restraining, preventing, and enjoining Defendant Employer from engaging in the illegal practices
 alleged, and to ensure compliance with Labor Code section 226;
10. On behalf of the ascertainable class, for restitution damages on behalf of the Section 17200
 claimants who share a common or general interest;
11. For an award of interest, including prejudgement interest, pursuant to Labor Code Section 218.6;
12. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code Sections 226,
 2802, 1194 and 218.5;
13. For an award of punitive and exemplary damages where permissible;
14. For such other relief as the court deems just and proper.

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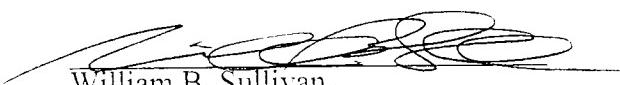
26

27

28

Dated: 7/16/07

SULLIVAN & CHRISTIANI, LLP



William B. Sullivan,
 Eric J. Palmer,
 Attorneys for Plaintiff KIMBERLY ALEKSICK

EXHIBIT B

SULLIVAN & CHRISTIANI
A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-383-3038

2330 Third Avenue
San Diego, California 92101
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

LAS VEGAS

1610 SOUTH TEETH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-382-2197
FACSIMILE 702-382-2116

June 1, 2007

Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Via Certified U.S. Mail Only

Re: Kimberly Aleksick v. 7-Eleven, Inc.

Dear Administrator:

Please allow this correspondence to serve as "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by 7-Eleven, Inc. in the above referenced matter. Thank you for your assistance on this issue.

The specific provisions alleged to have been violated by 7-Eleven, Inc. are as follows:

CALIFORNIA LABOR CODE SECTION 1197.1

Facts and Theories supporting the allegation: Our client, Kimberly Aleksick, worked as a "Sales Associate" for 7-Eleven, Inc. and its Franchisee, Michael Tucker, for approximately two years, from approximately February, 2005 to February, 2007. Please Note: Although Ms. Aleksick contends that 7-Eleven, Inc. was one of her employers, for purposes of the instant request, she contends that the entity was also acting as an "other person" as set forth within the above statute.

Throughout the term of her employment, 7-Eleven, Inc. acted as the record-keeper for all "Sales Associates," including Ms. Aleksick. 7-Eleven, Inc. retained sole discretion to act as record-keeper, and required its' Franchisees, including Mr. Tucker, to agree to allow 7-Eleven, Inc. to act as sole record-keeper, bill payer and payroll provider (Please see Exhibit A). No "Sales Associate" or any other employee could be paid until the record-keeping/bill-paying/payroll provisions were performed.

As part of its' actions as record-keeper, 7-Eleven, Inc. would create "Store Employee Time Cards" for each operative pay period. (Please see Exhibit B). The "Store Employee Time Cards" would record when the employee would clock "in" and "out" each time such punches were performed, on a daily basis. The "Time Cards" recorded the time specifically, down to the operative minute.

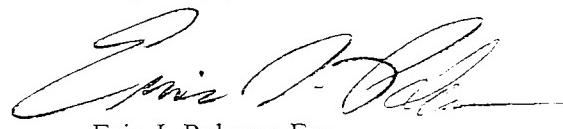
Importantly, even a cursory review of the "Time Cards" would show that many of the 30-minute "Meal Periods," required by California Labor Code sections 512 and 226.7, were not being provided. Further, and despite complaints to 7-Eleven employees (other than Mr. Tucker), there is no evidence that the "Meal Period Payments," required by California Labor Code section 226.7 and which constitute wages, were ever provided to Ms. Aleksick.

Based upon the above, Ms. Aleksick contends that, by failing to compensate her the wages due for absent or deficient Meal Periods, 7-Eleven, Inc. - as (at least) an "other person" - paid or caused to be paid amounts less than the minimum wage required by the Labor Code, and are thus liable under the above referenced statute.

To confirm, 7-Eleven, Inc. is a "person" as defined within California Labor Code section 18. As the sole record-keeper, bill payer and payroll provider, 7-Eleven, Inc. paid or caused to be paid amounts less than the minimum wage required by the Labor Code. Finally, the "Meal Period Payment" required by Labor Code section 226.7 is dis-positively a "wage," as recently confirmed by the California Supreme Court in Murphy v. Kenneth Cole, 40 Cal 4th 1094.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,


Eric J. Palmer, Esq.

Enclosures

Certified Mail Carbon-Copy: CSC - Lawyers Incorporating Service; 7-Eleven California Agent for
Service of Process
2730 Gateway Oaks Dr. Ste 100
Sacramento, CA 95833

7-Eleven, Inc.
2711 North Haskell Ave;
Dallas, TX 75204

EXHIBIT C

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-888-3038

**2330 Third Avenue
San Diego, California 92101**
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

LAS VEGAS

1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-382-2407
FACSIMILE 702-382-2016

June 4, 2007

Eric C. Sohlgren, Esq.
PAYNE & FEARS, LLP
4 Park Plaza, Suite 1100
Costa Mesa, California 92614

Via Facsimile Only: (949) 851-1212

Re: Kimberly Aleksick v. 7-Eleven, Inc.
Case No.: ECU03615

Dear Mr. Sohlgren:

Please allow this correspondence to serve as a reply to your June 1, 2007 letter in the above referenced matter. Thank you for your assistance throughout this litigation.

As an initial matter, thank you for the courtesy of a "preliminary notice" regarding your position in this matter. Regardless of our disagreement (specifically set forth below), we appreciate this attempt at courtesy, and will attempt to match it, if and when you ever require such actions.

However, and notwithstanding the above, we must respectfully decline your request at this time. Our reasoning is set forth below.

First, please be advised that your reference to the Singh v. 7-Eleven ruling is improper. A written trial court ruling is officially "unreported" and "unpublished;" it has no precedential value, and in fact may not even be properly cited to or relied upon. Santa Ana Hospital v. Belshe (1997) 56 Cal.App.4th 819; People v. Superior Court (1994) 22 Cal.App.4th 1541. In fact, a reference to this matter can support a request for sanctions under California Code of Civil Procedure section 128.7.

However, your citation to Singh actually supports Plaintiff's position that 7-Eleven is an employer, given the instant facts. Please note that we rely upon the California Supreme Court's discussion of the term "employer," as set forth in the Reynolds v. Bement matter. Please note that the reasoning of the Supreme Court in this matter is noticeably different than that of the Federal court in Singh. As the

Aleksick v. 7-Eleven, Inc., et al.

June 4, 2007

Page Two

Aleksick matter is within the jurisdiction of the State of California. we submit this definition controls. and supports Plaintiff's position.

Second, please note that all cases you have cited are (not surprisingly) factually distinctive from the Aleksick matter. We do not (and cannot) take issue with your present request, as you have not yet heard from Ms. Aleksick. However, this does support a representation that your instant request is, at best. preliminary.

Finally, please note that the operative Complaint is, at present, unverified. While you presume that the only theory against your client is based upon the argument that it would be an "employer," we do not limit our theories to your presumption. Of note, we are currently in the process of finalizing the "written notice," necessary under Labor Code section 2699.3. to claim for penalties not currently at issue in the present complaint. Please advise as to whether you wish to be carbon-copied on this notice.

Please note that your client was previously served with discovery requests. We anticipate discovery propounded by your client. Given these facts, I respectfully suggest that your present conclusions would be best made *following* responses to said discovery, if at all.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



Eric J. Palmer, Esq.

EXHIBIT D

Labor & Workforce Development Agency

*Governor
Arnold
Schwarzenegger*

*Secretary
Victoria L. Bradshaw*

Agricultural
Labor
Relations
Board

California
Unemployment
Insurance
Appeals
Board

California
Workforce
Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

July 11, 2007

Eric J. Palmer, Esq.
Sullivan & Christiani
2330 Third Avenue
San Diego, Ca. 92101

CSC-7-Eleven CA Agent for Service of Process
2730 Gateway Oaks Dr., Suite 100
Sacramento, Ca. 95833

Re: LWDA No: 2317
Employer: 7-Eleven
Employee: Kimberly Aleksick

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked June 6, 2007 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Robert A. Jones

Robert A. Jones
Deputy Secretary

EXHIBIT E

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
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2330 Third Avenue
San Diego, California 92101
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

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1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-382-2107
FACSIMILE 702-382-2016

July 16, 2007

Eric C. Sohlgren, Esq.
PAYNE & FEARS, LLP
4 Park Plaza, Suite 1100
Costa Mesa, California 92614

Via Facsimile Only: (949) 851-1212

Eric A. Welter, Esq.
WELTER LAW FIRM, P.C.
720 Lynn Street, Suite B
Herndon, VA 20170

Via Facsimile Only: (703) 435-8851

Re: Kimberly Aleksick v. 7-Eleven, Inc.
Case No.: ECU03615

Dear Gentlemen:

Please allow this correspondence to serve as notice of status in the above referenced matter. Thank you for your assistance throughout this litigation.

Initially, please be advised that we are in receipt of Mr. Welter's Notice of Application for *Pro Hac Vice* status. Please be advised that Plaintiff will not be opposing this Motion. We will file a Notice of Non-Opposition to (hopefully) ease the process.

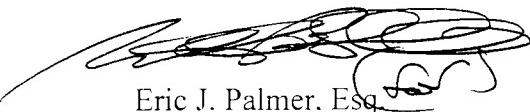
Second, please be advised that this office has recently received permission from the California Labor & Workforce Development Agency to proceed under California Labor Code section 2699 et. al. As, pursuant to Labor Code section 2699.3(c). Plaintiff is allowed to Amend as a matter of right, please allow this to serve as notice that your offices will shortly receive a First Amended Complaint.

Finally, pursuant to my recent telephonic conversation with Mr. Welter, it is my understanding that our respective offices will "meet and confer" at some future point, in an attempt to schedule depositions within a format that will allow Mr. Welter to be personally present. I have been informed that

counsel for Mr. Tucker will soon be formally appearing; as such, I believe any "meet and confer" should not proceed until such appearance has been made.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



The signature is handwritten in black ink, appearing to read "Eric J. Palmer, Esq." The "J" in "Palmer" is capitalized and followed by a small "Esq." with a trademark symbol (TM) next to it.

EXHIBIT F

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William B. Sullivan [CSB No. 171637] Eric J. Palmer [CSB No. 231207] SULLIVAN & CHRISTIANI, LLP 2330 Third Ave., San Diego, CA 92101 TELEPHONE NO.: (619) 702-6760 FAX NO. (Optional): (619) 702-6761		FOR COURT USE ONLY
E-MAIL ADDRESS (Optional): Plaintiff KIMBERLY ALEKSICK		
ATTORNEY FOR (Name): Plaintiff KIMBERLY ALEKSICK SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL STREET ADDRESS: 939 West Main Street MAILING ADDRESS: 939 West Main Street CITY AND ZIP CODE: El Centro, 92243 BRANCH NAME: Imperial County Courthouse		
PLAINTIFF/PETITIONER: Kimberly Aleksick DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE <input type="checkbox"/> LIMITED CASE (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		CASE NUMBER ECU 03615
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: August 14, 2007 Time: 8:30 a.m. Dept.: 7 Div.: Room:		
Address of court (if different from the address above):		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. This statement is submitted by party (name): Plaintiff KIMBERLY ALEKSICK
 - b. This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names):
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in complaint cross-complaint (describe, including causes of action):
 Plaintiff ALEKSICK has brought a Class Action complaint against defendants alleging violations of the California Labor Code and Business & Professions section 17200. Please also see Attachment 4a.

PLAINTIFF/PETITIONER: Kimberly Aleksick	CASE NUMBER
DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.	ECU 03615

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiff ALEKSICK was employed as a sales associate by both Defendant 7-ELEVEN, INC. and Defendant MICHAEL TUCKER. Plaintiff seeks damages for unpaid Overtime Compensation (Labor Code sec. 510); missed Meal/Rest Periods (Labor Code sec. 226.7); non-compliant itemized wage statements (Labor Code sec. 226); un-reimbursed business expenses (Labor Code sec. 2802); penalties (Labor Code sec. 203, 558, et seq.); statutory attorney's fees; interest; punitive damages; and injunctive relief pursuant to Business & Professions Code section 17200. Plaintiff will also seek penalties pursuant to Labor Code section 2699 against Defendant 7-Eleven, Inc. only.

(If more space is needed, check this box and attach a page designated as Attachment 4b)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. The trial has been set for (date):
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. days (specify number): 8-10
- b. hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

- a. Attorney: William B. Sullivan, Esq.
- b. Firm:
- c. Address:
- d. Telephone number:
- e. Fax number:
- f. E-mail address:
- g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference (specify code section):

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by (date).
- c. The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER: Kimberly Aleksick	CASE NUMBER:
DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.	ECU 03615

10. d. The party or parties are willing to participate in (*check all that apply*):

- (1) Mediation
- (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) Binding judicial arbitration
- (5) Binding private arbitration
- (6) Neutral case evaluation
- (7) Other (*specify*):

Plaintiff is amenable to non-binding mediation following resolution of class certification.

- e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (*specify exemption*).

11. Settlement conference

- The party or parties are willing to participate in an early settlement conference (*specify when*):

12. Insurance

- a. Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (*explain*):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status

- Bankruptcy Other (*specify*):

Status:

14. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status: Additional cases are described in Attachment 14a.
- b. A motion to consolidate coordinate will be filed by (*name party*):

15. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

16. Other motions

- The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
 Motion for Summary Adjudication following discovery; Motion for Class Certification.

CM-110

PLAINTIFF/PETITIONER: Kimberly Aleksick	CASE NUMBER
DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.	ECU 03615

17. Discovery

- a. The party or parties have completed all discovery.
 b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff	Deposition of PMKs for 7-Eleven, Inc.	11/1/2007
Plaintiff	Deposition of Michael Tucker	11/1/2007
Plaintiff	Class Discovery	1/1/2008

- c. The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
 b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19 Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

Plaintiff will oppose 7-Eleven's request for a stay on merits discovery pending completion of class discovery

20. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): none attached as Attachment 21.

22. Total number of pages attached (*if any*): 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: July 25, 2007

Eric J. Palmer

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY

Additional signatures are attached

Attachment 4a

Plaintiff recently received permission from the California Labor and Workforce Development Agency (LWDA) authorizing Plaintiff to file a claim under Labor Code section 2699.

Accordingly, Plaintiff will be amending her Complaint to add a cause of action under section 2699, naming Defendant 7-Eleven, Inc. as both an “employer” and as a “person.”

EXHIBIT G

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-888-3068

2330 Third Avenue
San Diego, California 92101
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

LAS VEGAS

1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-682-2117
FACSIMILE 702-682-2118

September 24, 2007

Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Via Certified U.S. Mail Only

Re: Kimberly Aleksick v. 7-Eleven, Inc.

Dear Administrator:

Please allow this correspondence to serve as a supplemental "written notice," as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by 7-Eleven, Inc. in the above referenced matter. We have previously provided notice on this case; newly learned information requires notification of further violations. Thank you for your assistance on this issue.

The specific provisions alleged to have been violated by 7-Eleven, Inc. are as follows:

CALIFORNIA LABOR CODE SECTIONS 201, 203, 226, 226.7, 510, 512, 1174, 1194 and 1199

Facts and Theories supporting the allegation: Our client, Kimberly Aleksick, worked as a "Sales Associate" for 7-Eleven, Inc. and its Franchisee, Michael Tucker, for approximately two years, from approximately February, 2005 to February, 2007.

Supplemental investigation leads to the conclusion that 7-Eleven, Inc. acted as an "employer" to all California-based 7-Eleven Associates, as it retained control and ultimate decision-making capability over the employment activities of said employees. In particular, 7-Eleven, Inc. retained absolute control over the Time-Sheets documenting the start and end time of the employees Meal Periods. These Time-

Sheet documents clearly show Meal Period "shorts," and we have been unable to locate any evidence of the payment of the one-hour wage required by California law in lieu of compliant Meal Periods.

Again, thank you for your assistance and instruction throughout this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,



Eric J. Palmer, Esq.

Enclosures

Certified Mail Carbon-Copy:

CSC - Lawyers Incorporating Service
7-Eleven California Agent for Service of Process
2730 Gateway Oaks Dr. Ste 100
Sacramento, CA 95833

7-Eleven, Inc.
2711 North Haskell Ave;
Dallas, TX 75204

EXHIBIT H

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address)		FOR COURT USE ONLY			
William B. Sullivan [CSB No. 231207] Eric J. Palmer [CSB No. 171637] SULLIVAN & CHRISTIANI, LLP 2330 Third Ave., San Diego, California 92101 TELEPHONE (619) 702-6760 FAX NO. (Corona) (619) 702-6761					
E-MAIL ADDRESS (Optional):					
ATTORNEY FOR (Name) Plaintiff KIMBERLY ALEKSICK					
SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL					
STREET ADDRESS	939 West Main Street				
MAILING ADDRESS	939 West Main Street				
CITY AND ZIP CODE	El Centro 92243				
BRANCH NAME	El Centro Courthouse				
PLAINTIFF/PETITIONER: Kimberly Aleksick, et al.					
DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.					
CASE MANAGEMENT STATEMENT					
(Check one):	<input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000)	<input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)			
		CASE NUMBER ECU 03615			
A CASE MANAGEMENT CONFERENCE is scheduled as follows:					
Date:	December 21, 2007	Time: 8:30 a.m.	Dept.: 7	Div:	Room:
Address of court (if different from the address above):					

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
 - a. This statement is submitted by party (name): Plaintiff KIMBERLY ALEKSICK
 - b. This statement is submitted jointly by parties (names):
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - a. The complaint was filed on (date): April 16, 2007
 - b. The cross-complaint, if any, was filed on (date):
3. Service (to be answered by plaintiffs and cross-complainants only)
 - a. All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. The following parties named in the complaint or cross-complaint
 - (1) have not been served (specify names and explain why not):
 - (2) have been served but have not appeared and have not been dismissed (specify names)
 - (3) have had a default entered against them (specify names):
 - c. The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. Description of case
 - a. Type of case in complaint cross-complaint (describe, including causes of action).

Plaintiff's 1st Amended Class Action Complaint will allege: Negligence; Negligence Per Se; Negligent Interference Prosp. Econ. Advtge.; Labor Code violations (2699, et al.); Violation of B&PC sec. 17200

PLAINTIFF/PETITIONER: Kimberly Aleksick, et al.

CASE NUMBER

DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.

ECU 03615

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiff was employed by both Defendants as a sales associate. Plaintiff on behalf of the proposed Class alleges violations of the Labor Code and Business & Professions Code sec. 17200 by both Defendants.

Plaintiff further alleges that Defendant 7-Eleven, Inc. assumed and breached a duty of care to the proposed Class and is thus liable under Negligence theories. Lastly, Plaintiff also brings a representative action under the Private Attorneys General Act (Labor Code sec. 2699, et seq.) for the underlying Labor Code violations.

Plaintiff seeks individual and Class economic damages, attorney's fees and costs, interest, applicable Labor Code section 2699 penalties, punitive damages, restitution, and injunctive relief.

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**

The party or parties request a jury trial a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**

- a. The trial has been set for (date):
- b. No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. **Estimated length of trial**

The party or parties estimate that the trial will take (check one):

- a. days (specify number): 8 to 10.
- b. hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial by the attorney or party listed in the caption by the following:

a. Attorney: William B. Sullivan [CSB No. 171637]

b. Firm: SULLIVAN & CHRISTIANI, LLP

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference (specify code section):

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel has has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. All parties have agreed to a form of ADR. ADR will be completed by (date):
- c. The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER: Kimberly Aleksick, et al.

CASE NUMBER

DEFENDANT/RESPONDENT: 7-Eleven, Inc., et al.

ECU 03615

10. d. The party or parties are willing to participate in (check all that apply):

- (1) Mediation
- (2) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
- (3) Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
- (4) Binding judicial arbitration
- (5) Binding private arbitration
- (6) Neutral case evaluation
- (7) Other (specify):

Plaintiff is amenable to non-binding mediation following resolution of Class certification.

- e. This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit
- f. Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g. This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights: Yes No
- c. Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status:

 Bankruptcy Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. There are companion, underlying, or related cases.
 - (1) Name of case:
 - (2) Name of court:
 - (3) Case number:
 - (4) Status:
- Additional cases are described in Attachment 14a.
- b. A motion to consolidate coordinate will be filed by (name party):

15. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

Motion for Summary Adjudication following discovery; Motion for Class Certification.

PLAINTIFF/PETITIONER:	Kimberly Aleksick, et al.	CASE NUMBER
DEFENDANT/RESPONDENT:	7-Eleven, Inc., et al.	ECU 03615

17. Discovery

- a. The party or parties have completed all discovery.
 b. The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Plaintiff	Deposition of PMKs for 7-Eleven, Inc.	2/1/2008
Plaintiff	Deposition of Michael Tucker	2/1/2008
Plaintiff	Class Discovery	3/1/2008

- c. The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
 b. This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

Plaintiff will oppose 7-Eleven, Inc.'s request for a stay on merits discovery pending completion of Class discovery.

20. Meet and confer

- a. The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*).
 b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): none attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: December 10, 2007

Eric J. Palmer, Esq.

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY

SIGNATURE OF PARTY OR ATTORNEY

Additional signatures are attached

EXHIBIT I

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-888-3038

2330 Third Avenue
San Diego, California 92101
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

LAS VEGAS

1616 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-382-2107
FACSIMILE 702-382-2016

December 13, 2007

Via U.S. Mail and Facsimile: (619) 239-0116
(703) 435-8851
(949) 851-1212

Paul C. Johnson, Jr., Esq.
Bacalski, Ottoson, & Dubé, LLP
402 West Broadway, 24th Floor
San Diego, CA 92101-3542

Eric A. Welter, Esq. (Virginia)
WELTER LAW FIRM, P.C.
720 Lynn Street, Suite B
Herndon, VA 20170

Eric C. Sohlgren, Esq.
PAYNE & FEARS LLP
4 Park Plaza, Suite 1100
Irvine, CA 92614

Re: Kimberly Aleksick v. 7-Eleven, Inc.
Case No.: ECU03615

Dear Gentlemen:

Enclosed please find Plaintiff's First Amended Complaint in the above referenced matter. Thank you for your assistance throughout this litigation.

As discussed with Mr. Sullivan at the initial Case Management Conference, this Amended Complaint incorporates, among other theories, a cause of action asserting a violation of Labor Code section 2699, *et seq.* against Defendant 7-Eleven. At this time, Plaintiff does not intend to further amend the Complaint.

Given the above, and as previously discussed, please allow this correspondence to serve as a proposal that all parties agree to schedule a telephone conference to discuss the present parameters and timing of discovery. Among other issues, it is my understanding that Mr. Welter desires to limit certain discovery. I believe that an understanding by all parties, prior to the upcoming December 21, 2007 Case Management Conference, will assist both counsel and the Court.

Additionally, please allow this correspondence to serve as notice that Plaintiff has scheduled an *Ex-Parte* Conference, on Friday, December 21, 2007, at 8:30 a.m. The purpose of this *Ex-Parte* will be to request the Court Order the dissemination of a Pioneer Electronics Belaire Notice, to all proposed Class Members, regarding the production of contact information on the proposed Class Members.

This office can make itself available, at any time between 9 a.m. and 5 p.m. (Pacific Standard Time), upon 48 hours notice. As such, it is respectfully requested that you contact the undersigned, at your earliest convenience, to schedule the pre-CMC teleconference.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact my office.

Very truly yours,



Eric J. Palmer

Enclosure

cc: William B. Sullivan, Esq.

EXHIBIT J

William B. Sullivan [CSB No. 171637]
Eric J. Palmer [CSB No. 231207]
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff KIMBERLY ALEKSICK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

KIMBERLY ALEKSICK, individually and on behalf of other members of the general public similarly situated.

CASE NO. ECU03615

(CLASS ACTION)

**POINTS AND AUTHORITIES IN SUPPORT
OF PLAINTIFF'S *EX PARTE*
APPLICATION FOR ORDER
COMPELLING "PIONEER/BELAIRE"
NOTICE, OR IN THE ALTERNATIVE,
FOR AN ORDER SHORTENING TIME TO
HEAR PLAINTIFF'S REQUEST FOR AN
ORDER COMPELLING
"PIONEER/BELAIRE" NOTICE;
{PROPOSED} ORDER**

Defendants

Date: December 21, 2007

Time: 8:30 a.m.

Dept.: 7

Judge: Hon. Christopher W. Yeager

I. SUMMARY OF REQUEST

Plaintiff KIMBERLY ALEKSICK(hereinafter “ALEKSICK”) respectfully applies to this Court for an Order compelling the parties in the above captioned matter to provide a notice to all potential Class Members notifying said Class Members of the pending litigation, and providing them the opportunity to “Opt-Out” of the dissemination of their individual names, addresses and telephone numbers. This request is brought pursuant to Pioneer Electronics (USA), Inc. v. Superior Court (2007) 40 Cal.4th 360, 373; Belaire-West Landscape, Inc. v. Superior Court (2007) 149 Cal. App.4th 554, 562.

11

ii

POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION FOR ORDER
COMPELLING PIONEER/BELAIRE NOTICE - CASE NO. ECU 08-01

1 Specifically, ALEKSICK, requests the Court order the following actions:

- 2 A) That counsel for both parties "meet and confer" within five (5) court days on a proposed joint
 3 notice to all proposed Class members. A redacted copy of a proposed notice to employee
 4 class members from a separate, unrelated litigation is filed herewith as Exhibit "A";
 5 B) That the notice be mailed to all proposed Class Members within five (5) court days of the
 6 Court's Order; and
 7 C) That the Court mandate that proposed Class members shall have thirty (30) calendar days to
 8 "Opt-Out" or have their contact and employment information disclosed to Plaintiff's counsel.

9 **II. VERIFIED FACTUAL SUMMARY**

10 The facts relevant to this motion are verified below. In law and motion practice, factual
 11 summaries are commonplace and useful provided each fact mentioned is supported by admissible
 12 evidence and preferably if each such factual allegation is followed by an appropriate reference to the
 13 alleged evidence supporting the motion. However, if no admissible evidence supports the party's
 14 alleged facts, the court must disregard "facts" contained in an unverified statement. Calcor Space
 15 Facility, Inc. v. Superior Court (1997) 53 Cal. App.4th 216. 224.

16 This is a Wage and Hour Class Action, asserting allegations regarding Meal/Rest periods and
 17 Itemized Wage Statements ("pay stubs".) Plaintiff ALEKSICK filed her controlling Class Action
 18 Complaint in the Imperial County Superior Court on April 16, 2007. (Please see Declaration of Eric
 19 J. Palmer.)

20 In an attempt to comply with her pre-class certification proof obligations, Plaintiff
 21 ALEKSICK has requested information and documents directly relevant to the Class "commonality"
 22 element. Cal. Code of Civil Procedure § 382. (Please see Declaration of Eric J. Palmer.)

23 In consideration of the Imperial County Superior Court's "Fast Track" system, and in order
 24 to expedite both the discovery and class certification processes in this matter, Plaintiff applies *Ex parte*
 25 for an Order compelling a joint notice to all putative Class members, pursuant to the Pioneer/Belaire
 26 line of authority, or in the alternative, for an Order shortening time to hear ALEKSICK'S request for
 27 an Order compelling said notice. (Please see Declaration of Eric J. Palmer.)

28 //

III. PLAINTIFF'S REQUEST

A. THE CALIFORNIA SUPREME COURT HAS ESTABLISHED THE PROPERITY AND REASONABLENESS OF THE PROPOSED NOTICE

The controlling California law regarding the production of employee contact and employment information pre-Certification is set forth in the Pioneer Electronics (USA), Inc. v. Superior Court (2007) 40 Cal.4th 360, 373 and Belaire-West Landscape, Inc. v. Superior Court (2007) 149 Cal.App.4th 554, 562. These cases establish parameters and propriety of such notice.

i. The Pioneer Electronics Decision

In Pioneer Electronics, supra, the plaintiff brought a Class Action representing purchasers of defective DVD players against the seller. On appeal before the California Supreme Court, the issue presented was whether the defendant seller could oppose plaintiff's request for identifying class member information during civil discovery proceedings based on the class members' right to privacy.

In holding for the *plaintiff*, the Supreme Court reasoned that, “[c]ontact information regarding the identity of potential class members is generally discoverable, so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the case.” *Pioneer*, *supra*. 40 Cal.4th at p. 373. Thus, the Court *permitted* disclosure of identifying class member information, pre-certification, to plaintiff, following a notice to class members allowing a sufficient opportunity to object to the production of their personal information:

For all the foregoing reasons, we think the trial court properly evaluated the alternatives, balanced the competing interests, and permitted the disclosure of **contact information** regarding Pioneer's complaining customers unless, following proper notice to them, they registered a written objection. These customers had *no* reasonable expectation of any greater degree of privacy, and *no* serious invasion of their privacy interests would be threatened by requiring them affirmatively to object to disclosure. Pioneer, supra, at pp. 373-374. (Emphasis added.)

ii. The Belaire-West Landscape Decision

In the subsequent decision of Belaire-West Landscape, Inc. v. Superior Court, supra, the Court of Appeal *confirmed* that the holding of Pioneer Electronics, a consumer class action case, was equally applicable to employment class actions, such as the instant litigation.

In Belaire, two former employees brought a putative class action against their former employer alleging “wage and hour” violations. As in Pioneer, the defendant opposed the plaintiff’s request for

1 class member identifying information on privacy grounds. In finding for the *plaintiff*, the Court of
 2 Appeal adopted the reasoning of the California Supreme Court:

3 The *Pioneer* analysis leads us to conclude that *opt-out* notices will also suffice
 4 here...While it is unlikely that the employees anticipated broad dissemination of their
 5 contact information when they gave it to Belaire-West, that does not mean that they
 6 would wish it to be withheld from a class action plaintiff who seeks relief for
 7 violations of employment laws. Just as the dissatisfied Pioneer customers could be
 8 expected to want their information revealed to a class action plaintiff who might
 9 obtain relief for the defective DVD players, *so can current and former Belaire-*
West employees reasonably be expected to want their information disclosed to a
class action plaintiff who may ultimately recover for them unpaid wages that they
are owed. (*Belaire West, supra*, 149 Cal.App.4th at p. 561.)(Emphasis added.)

9 B. THE REQUESTED TIME PARAMETERS ARE REASONABLE

10 Plaintiff has brought the instant *Ex Parte* request, in part, in consideration of the system
 11 adopted by the Imperial County Superior Court and the Judicial Council of California.

12 Pursuant to California Rules of Court 710, 711, and 712(a), all California trial courts are to
 13 adopt local rules for the disposition of general civil cases which are consistent with California
 14 Government Code § 68603, *et seq.* (The Trial Court Delay Reduction Act. "the Act".)

15 Under the Act, the goal for resolution of unlimited civil cases is: 75% disposed of within 12
 16 months, 85% disposed of within 18 months, and **100% within 2 years after filing**. (Cal. Govt. Code
 17 § 68603, *et seq.*; please see also Cal. Rule of Court 3.714(b)(1).)

18 Based on the foregoing, Plaintiff ALEKSICK contends that it would be in the best interest of
 19 the Class, and far less burdensome on the Court, for the proposed *Pioneer/Belaire* Notice to be issued
 20 within five (5) court days from the date of the Order. Having the proposed Class members authorize
 21 the disclosure of their contact and employment information will expedite both discovery and the class
 22 certification process in this matter by avoiding further colloquies between the parties' counsel on
 23 whether said information should be disclosed. (Declaration of Palmer.)

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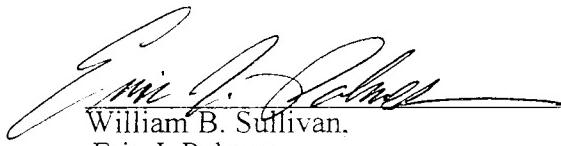
1 **V. CONCLUSION**

2 Based on the foregoing arguments and authorities, Plaintiff ALEKSICK respectfully requests
 3 the Court grant ALEKSICK's *Ex Parte* Application and Order the following:

- 4 ○ The Parties to this matter are to "meet and confer" and agree within five (5) court
 5 days on a proposed joint notice to putative class members, informing them of
 6 Plaintiff ALEKSICK's request for contact and employment information;
- 7 ○ Defendant 7-ELEVEN, INC. shall mail the joint notice to all putative Class
 8 members within 5 court days;
- 9 ○ Putative Class members shall thereon have thirty (30) calendar days to exclude
 10 themselves from Plaintiff's request by "opting out";
- 11 ○ Immediately after the 30 day "opt out" period, Defendant shall produce the full
 12 name, last known home address, and last known home telephone number of all
 13 putative class members who have not "opted out" and excluded themselves from
 14 Plaintiff's request.
- 15 ○ In the alternative, ALEKSICK requests that the Court issue an Order shortening
 16 time to hear ALEKSICK'S request for an Order compelling a "Pioneer/Belaire"
 17 notice.

18
 19 Dated: 12/17/07

20 **SULLIVAN & CHRISTIANI, LLP**

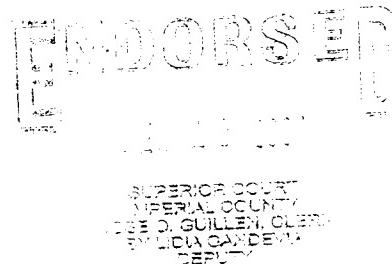


21 William B. Sullivan,
 22 Eric J. Palmer,
 23 Attorneys for Plaintiff KIMBERLY ALEKSICK

EXHIBIT K

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Attorneys for Plaintiff KIMBERLY ALEKSICK,
individually and on behalf of other members of the
general public similarly situated,



**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL**

KIMBERLY ALEKSICK, individually and on behalf of other members of the general public similarly situated,

Plaintiff.

V

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and
DOES 1-50, Inclusive,

Defendants.

CASE NO. ECU 03615

(CLASS ACTION)

**FIRST AMENDED COMPLAINT
FOR:**

1. NEGLIGENCE (CLASS ACTION);
2. NEGLIGENCE *PER SE* (CLASS ACTION);
3. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE (CLASS ACTION);

4. VIOLATION OF LABOR CODE; (CLASS ACTION);

5. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 (CLASS ACTION);

**6. VIOLATION OF LABOR CODE
SECTION 2699, et seq.
(REPRESENTATIVE ACTION)**

COMES NOW Plaintiff KIMBERLY ALEKSICK, (hereinafter "Plaintiff"), and alleges for her Complaint as follows:

1. This Court has jurisdiction over this matter in that all parties are residents of the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. This Class action is brought pursuant to Section 382 of the California Code of Civil Procedure, and

1 this Representative action is brought pursuant to Labor Code section 2699, *et seq.* With respect
 2 to the Class action, the monetary damages and restitution sought by Plaintiff exceed the minimal
 3 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
 4 monetary damages sought on behalf of each and every member of the class and as aggregate class
 5 damages exceed those jurisdictional limits as well. However, the claims of individual class
 6 members, including Plaintiff, are under the \$75,000.00 jurisdictional threshold for federal court.
 7 Furthermore, there is no federal question at issue, as Wage and Hour protections and remedies
 8 related thereto are based solely on California Law and Statutes, including the Labor Code, Civil
 9 Code, Code of Civil Procedure, and Business and Professions Code.

- 10 2. Venue is proper before this Court in that some or all of the events, acts and happenings as alleged
 11 herein occurred within the jurisdiction of the above-entitled court.
- 12 3. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's
 13 injuries occurred in Imperial County in the State of California.
- 14 4. At all relevant times herein, Plaintiff KIMBERLY ALEKSICK (Hereinafter "Plaintiff") was and
 15 is an individual residing in Imperial County in the State of California.
- 16 5. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
 17 Defendant 7-ELEVEN, INC. (hereinafter "Defendant 7-ELEVEN"), was and is a Texas
 18 Corporation doing business in Imperial County in the State of California.
- 19 6. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
 20 Defendant MICHAEL TUCKER (hereinafter "TUCKER") was and is, residing and doing
 21 business in Imperial County in the State of California.
- 22 7. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named
 23 herein as DOES 1 through 50, inclusive. Accordingly, Plaintiff will seek leave of court to amend
 24 this Complaint to allege their true names and capacities after the same have been ascertained.
- 25 8. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
 26 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in
 27 so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and
 28 in doing the actions mentioned below was acting within the course and scope of his or her

1 authority as such agent, servant, partner, and employee with the permission and consent of the
 2 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said Defendants.
 3 Wherever it is alleged herein that any act or omission was done or committed by any specially
 4 named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same
 5 act or omission was also done and committed by each and every Defendant named as a DOE,
 6 both separately and in concert or conspiracy with the named Defendant or Defendants.

7 9. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
 8 including DOES 1 through 50, are, and at all times herein mentioned were, either individuals,
 9 sole proprietorships, partnerships, registered professionals, corporations, alter egos, or other legal
 10 entities which were licensed to do and/or were doing business in the County of San Diego, State
 11 of California at all times relevant to the subject matter of this action.

CLASS ACTION ALLEGATIONS

10. As more specifically set forth below, Plaintiff is bringing this action on behalf of an ascertainable
 11 class and a well-defined community of interest among the class members. Code of Civil
 12 Procedure Section 382; Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 426, 470.
 13 Throughout her employment, Plaintiff and her former co-workers were knowingly denied and/or
 14 refused mandated relieved meal and rest periods, in violation of Labor Code Section 512.
 15 Defendant 7-ELEVEN and TUCKER ("Defendants") further failed to provide Plaintiff and her
 16 former co-workers one hour of pay at their regular rate of pay for each day the meal and rest
 17 periods were not provided, in violation of Labor Code Section 226.7, despite such knowledge.
 18 Moreover, Plaintiff and other employees of Defendants regularly worked (at times, in excess of
 19 eight (8) hours a day and/or forty (40) hours a week) without receiving appropriate compensation,
 20 including but not limited to minimum wage and or overtime compensation. Further, Plaintiff and
 21 other employees of Defendants were required to purchase uniforms using their own monies
 22 without reimbursement, in violation of Labor Code section 2802. Additionally, Plaintiff and
 23 other employees did not receive itemized wage statements ("pay-stubs") which were compliant
 24 with the provisions of Labor Code section 226.
 25
 26
 27
 28

- 1 11. Plaintiff brings this action on the grounds that she and other similarly situated employees
2 employed by Defendants were and are improperly denied earned compensation (including
3 minimum wage and overtime compensation), denied mandated wages resulting from missed meal
4 and rest periods, improperly required to purchase work uniforms without reimbursement, and
5 improperly issued statutorily non-compliant pay-stubs. Sav-On Drug Stores, Inc. v. Superior
6 Court (2004) 34 Cal.4th 319. The class of present and former employees is believed to number
7 approximately five thousand (5000.)
- 8 12. The approximately 5000 member class is ascertainable via their experience as present or past
9 employees of Defendants, and/or as individuals who experienced Defendant 7-ELEVEN acting
10 as "Bookkeeper/Payroll Provider" while they were employed for a 7-ELEVEN store.
- 11 13. The class members share a community of interest and an injury in fact as Defendants have
12 violated California laws, thereby depriving the class members of money earned by them.
- 13 14. This action involves questions of law and fact common to the class in that Plaintiff is bringing
14 this action on behalf of a class of Defendants' current and former employees who were and or
15 are improperly denied mandated meal and rest periods, overtime compensation, statutorily
16 compliant pay stubs, and were and/or are improperly required to purchase work uniforms with
17 their own wages. The subject matter of this action both as to factual and legal matters is such that
18 there are questions of law and fact common to the class which predominate over questions
19 affecting only individual members, including, among other violations, the following:
- 20 A. Statistically, one hundred percent (100%) of the class members were not "authorized and
21 permitted" to take their legally mandated meal and rest periods, and were not provided
22 the legally mandated payment for not receiving relieved meal and rest periods. One
23 hundred percent of the class members were required by Defendants to purchase work
24 uniforms using their own wages. None of the class members received statutorily
25 compliant pay-stubs during the operative class period.
- 26 B. Statistically, one hundred percent (100%) of the class members were not provided
27 appropriate compensation, including minimum wage and overtime compensation, due to
28 an illegal "rounding" method, the result of which would improperly deduct actual time

worked by the Class Members, such that the Class Members were compensated at a lesser rate.

- 3 C. Statistically, one hundred percent (100%) of the class members were not provided
4 compliant Itemized Wage Statements, in that, among other deficiencies, the actual hours
5 worked, and the gross wages earned, were not accurate.

6 D. Statistically, one hundred percent (100%) of the class members were damaged when
7 Defendant 7-ELEVEN, acting as self professed “Bookkeeper” and/or “Payroll Provider,”
8 breached its Duty of Care and proximately caused damage, in the form of monetary loss,
9 to each of the Class Members.

10 15. The duties and responsibilities of the class members Plaintiff is representing were similar and
11 comparable. Any variations in job activities between the individual class members are legally
12 insignificant to the issues presented by this action since the central facts remain, to wit, Plaintiff
13 and the other class members were improperly denied the mandated meal and rest periods,
14 compensation, pay-stubs, and were improperly required to purchase work uniforms using their
15 own wages.

16 16. The class on whose behalf the action is brought is so numerous that joinder of all parties
17 individually would be impractical. Plaintiff is bringing this action on behalf of approximately
18 5000 current and/or former employees of Defendants who share a common or general interest,
19 and it would be impracticable for those current or former employees to bring the action
20 individually.

21 17. Plaintiff’s claims in this action are typical of the class Plaintiff is generally representing. To wit,
22 Plaintiff and other members in the class were required and instructed by Defendants to perform
23 work during their mandated meal and rest periods and were not provided the mandated relieved
24 and off-duty meal and rest breaks. Defendants further failed to provide Plaintiff and other
25 members in her class one hour of pay at their regular rate of pay for each day the meal and rest
26 periods were not provided, in violation of Labor Code Section 226.7. Defendants further failed
27 to properly pay compensation to Plaintiff and other class members for work performed by them.
28 Defendants further failed to provide Plaintiff and other class members statutorily compliant pay-

1 stubs in accordance with Labor Code Section 226. Defendants further required Plaintiff and
 2 other class members to purchase work uniforms using their own wages. Plaintiff seeks proper
 3 compensation and restitution on behalf of herself and other members in the class for the
 4 foregoing irregularities.

5 18. Plaintiff can fairly and adequately protect the interests of all the members of the class she is
 6 representing in this action. Plaintiff's experience and knowledge of her former employers' Wage
 7 and Hour practices and its policy regarding Meal and Rest periods, compensation, issuing pay-
 8 stubs, and employee uniform purchases, in addition to Plaintiff's familiarity with the job duties
 9 of the class members she is representing, entitle her to adequately and fairly represent the class.

10 19. Plaintiff has satisfied the three prong "community of interest" requirement in California Code
 11 of Civil Procedure Section 382. For example, and as set forth above, (a) this action involves
 12 predominant common questions of law or fact in that Plaintiff brings this action on behalf of the
 13 approximately 5000 member class who were denied compensation, mandated relieved meal and
 14 rest periods, and required wages under Labor Code Section 226.7 and Title 8, California Code
 15 of Regulations Section 11070(11)(C) also known as Wage Order 7 and therefore, like Plaintiff,
 16 were improperly compensated, (b) Plaintiff's claims and damages are typical of the class Plaintiff
 17 represents in that, as mentioned above, Plaintiff seeks on behalf of herself and the class members
 18 she represents wages for failure to provide them the required meal and rest periods, including
 19 required wages under Labor Code Section 226.7 and Title 8, California Code of Regulations
 20 Section 11070(11)(A) and (B), and (c) Plaintiff's experience and knowledge of her former
 21 employer's Wage and Hour practices and its policy regarding meal and rest periods, in addition
 22 to Plaintiff's familiarity with the job duties of the class members she is representing, entitle her
 23 to adequately and fairly represent the class.

FACTUAL BACKGROUND

24 20. In or about 2005, Plaintiff commenced working in a position titled by Defendants as "Sales
 25 Associate." Plaintiff's employment with Defendants continued until her involuntary termination
 26 on February 20, 2007. Throughout her employment with Defendants, Plaintiff performed her job
 27 in a capable and competent manner, and was commended for doing so. Throughout her
 28

1 employment with Defendants, both Defendants exercised control over the wages, hours, and/or
 2 working conditions of Plaintiff and her fellow employees, and both Defendants possessed the
 3 right to terminate Plaintiffs' employment, by and through their represented roles as Franchisor
 4 and Franchisee. Additionally, and separate and distinct from its obligation as an employer,
 5 Defendant 7-ELEVEN required all of its represented Franchisees to delegate the role of
 6 Bookkeeper and Payroll Provider to Defendant 7-ELEVEN, and to provide certain
 7 documentation - including "time and wage authorizations for your Store employees" - to
 8 Defendant 7-ELEVEN. Defendant 7-ELEVEN would thereafter configure and process payroll
 9 to the Class Members, including Plaintiff.

- 10 21. Pursuant to the Franchise Agreement between Defendant 7-ELEVEN and Defendant TUCKER,
 11 and 7-ELEVEN, 7-ELEVEN assumed various statutory duties, as well as a basic Duty of Care.
 12 (Please see Exhibit "D".) 7-ELEVEN failed to provide Plaintiff and her former co-workers one
 13 hour of pay at their regular rate of pay for each day the meal and rest periods were not provided,
 14 in violation of Labor Code Section 226.7, despite such knowledge. Moreover, Plaintiff and other
 15 employees of Defendants regularly worked, and at times in excess of eight (8) hours a day and/or
 16 forty (40) hours a week, without receiving appropriate and represented compensation, including
 17 minimum wage and overtime compensation. Despite such knowledge, Defendant 7-ELEVEN
 18 failed to provide Plaintiff or other employees with the compensation required by statute, and at
 19 the represented amount provided to the employee Class Members. Further, Plaintiff and other
 20 employees of Defendants were required to purchase uniforms using their own monies, in
 21 violation of Labor Code section 2802. Additionally, Plaintiff and other employees did not
 22 receive itemized wage statements ("pay-stubs") from 7-ELEVEN which were compliant with the
 23 provisions of Labor Code section 226.
- 24 22. Within its purview of Bookkeeper/Payroll Provider, Defendant 7-ELEVEN failed to
 25 authorize and/or provide the One-Hour Wage required by California law where a worker
 26 has not experienced a 30 minute completely relieved "Meal Period," despite being aware
 27 of the specific time periods in which Plaintiff and other Class Members did not receive
 28 said 30 minute completely relieved "Meal Periods." Additionally, Defendant 7-ELEVEN

1 used an illegal "rounding" method to lessen the reported actual hours worked by the Class
 2 Members, resulting in the Class Members receiving lesser compensation.
 3

4 **FIRST CAUSE OF ACTION**

5 **Negligence - Class Action**

6 (By The Class Against Defendant 7-ELEVEN, Inc.)
 7

- 8 23. Plaintiff hereby incorporates by reference paragraphs 1 through 22 above, as though fully set
 9 forth herein.
- 10 24. Throughout the operative time period, Defendant 7-ELEVEN owed Plaintiff and the other Class
 11 Members a Duty of Care. To wit, Defendant 7-ELEVEN - by and through its operative
 12 "Franchise Agreements" - required that each purported Franchisee (to which Defendant
 13 TUCKER is an example) delegate the role of Bookkeeper and Payroll Provider to Defendant 7-
 14 ELEVEN, and to provide certain documentation - including "time and wage authorizations for
 15 your Store employees" - to Defendant 7-ELEVEN. Each of the Class Members, including
 16 Plaintiff, fit within the definition of the 7-ELEVEN term "Store employee." Defendant 7-
 17 ELEVEN would thereafter configure and process payroll to all the Class Members, including
 18 Plaintiff. Defendant 7-ELEVEN assumed the Duty of Care by and through the Franchise
 19 Agreements 7-ELEVEN itself created. The Duty of Care included the duty to provide each Class
 20 Member with all monies earned and/or legally owing to the Class Members. In fact, the
 21 assumption of this Duty of Care was so important to 7-ELEVEN that a Franchisees failure to use
 22 7-ELEVEN as Bookkeeper/Payroll Provider was legal cause for 7-ELEVEN to rescind the
 23 operative Franchise Agreement.
- 24 25. Throughout the operative time period, Defendant 7-ELEVEN breached its Duty of Care to
 25 Plaintiff and the other Class Members. To wit, and as examples, 7-ELEVEN failed to comply
 26 with California State legal requirements regarding the payment of minimum and overtime wages,
 27 as well as the payment of wages for non-compliant Meal and Rest Periods. Specifically, despite
 28 the knowledge that certain employees would receive less than the 30-minute time period
 (knowledge gained through documentation 7-ELEVEN itself required to be filled out, and
 processed using a 7-ELEVEN created "system") Defendant 7-ELEVEN failed to process or pay

the additional “one-hour wage” required by State law. Additionally, 7-ELEVEN used an illegal “rounding” system of employee work time calculation, where the actual work time provided by employees would be re-configured by 7-ELEVEN, resulting in a decrease in the amount of work-time reported and paid to the Class Members. Defendant 7-ELEVEN breached its Duty of Care to provide each Class Member with all monies earned and/or legally owing to the Class Members. This decrease violated State wage and hour laws, including but not limited to minimum wage and overtime requirements.

- 8 26. The failure by Defendant 7-ELEVEN to comply with the operative Duty of Care caused damage
9 to Plaintiff and the other Class Members.
10 27. As a direct result of Defendant 7-ELEVEN's Breach of its' Duty of Care, Plaintiff and the other
11 Class Members have suffered Damages.

SECOND CAUSE OF ACTION

Negligence *Per Se* - Class Action

(By The Class Against Defendant 7-ELEVEN)

- 16 28. Plaintiff hereby incorporates by reference paragraphs 1 through 27 above, as though fully set
17 forth herein.

18 29. The State of California has enacted and codified various protections, in favor of employees, in
19 regard to the payment of wages earned during employ. For example. California Labor Code
20 section 1194 provides as follows:

21 (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less
22 than the legal minimum wage or the legal overtime compensation applicable to the
23 employee is entitled to recover in a civil action the unpaid balance of the full amount of this
24 minimum wage or overtime compensation, including interest thereon, reasonable attorney's
25 fees, and costs of suit. (b) The amendments made to this section by Chapter 825 of the
26 Statutes of 1991 shall apply only to civil actions commenced on or after January 1, 1992.

27 30. The State of California has also enacted and codified those person(s) to whom the duties to
28 ensure the above employee protections apply. These statutes, exemplified below, establish
29 required duties upon employers and "other person(s) acting individually" or "on behalf of an
30 employer."

- 1 31. For example, California Labor Code section 1197.1 provides, in pertinent part, as follows:
- 2 Any employer or other person acting either individually or as an officer, agent, or employee
 3 of another person, who pays or causes to be paid to any employee a wage less than the
 4 minimum fixed by an order of the commission shall be subject to a civil penalty as follows:
 5 ...
- 6 32. California Labor Code section 1199 provides as follows:
- 7 Every employer or other person acting either individually or as an officer, agent, or employee
 8 of another person is guilty of a misdemeanor and is punishable by a fine of not less than one
 9 hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any
 10 of the following: (a) Requires or causes any employee to work for longer hours than those
 11 fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes
 12 to be paid to any employee a wage less than the minimum fixed by an order of the commission.
 13 (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or
 14 ruling of the commission.
- 15 33. California Labor Code section 558 provides, in pertinent part, as follows:
- 16 (a) Any employer or other person acting on behalf of an employer who violates, or causes to
 17 be violated, a section of this chapter or any provision regulating hours and days of work in any
 18 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: ...
- 19 34. During the course of the operative Class Period, Defendant 7-ELEVEN owed a duty of care
 20 to Plaintiff and the other Class Members to ensure that each Class Member was fully and
 21 completely paid all wages earned, and reimbursable expenses incurred, during their employ.
 22 To require its represented “Franchisees” to use 7-ELEVEN as Payroll-Processor/Bookkeeper
 23 (and, as a result, all Class Members to experience 7-ELEVEN Payroll-Processing), 7-ELEVEN
 24 incurred a duty of care in performing the functions of said positions. Further, 7-ELEVEN
 25 assumed these statutory duties pursuant to the Franchise Agreement, where the purported
 26 Franchisees failure to assign this duty to 7-ELEVEN was proper grounds for 7-ELEVEN to
 27 rescind and/or cancel the contract.
- 28 35. Defendant 7-ELEVEN breached its’ Duty of Care to the Class Members. 7-ELEVEN
 29 breached multiple Labor Code sections, including those referenced above, as well as 226,
 30 226.7, 510, 512, and 2802. For example, Defendant 7-ELEVEN possessed knowledge of the
 31 time taken by each Class Member during the above referenced Meal Periods, and those specific
 32 occasions in which the time taken did not comply with the statutory requirement. Defendant
 33 7-ELEVEN was aware of the statutory requirement to provide a Wage of One-Hour where the
 34 Meal Period was not fully provided. Despite having the responsibility of providing said Wage

1 of One-Hour, 7-ELEVEN did not provide this wage. As a second example, 7-ELEVEN used
 2 an illegal “rounding” system of employee work time calculation, where the actual work time
 3 provided by employees would be re-configured by 7-ELEVEN, resulting in a decrease in the
 4 amount of work-time reported and paid to the Class Members. This decrease violated State
 5 wage and hour laws, including but not limited to minimum wage and overtime requirements.

- 6 36. Defendant 7-ELEVEN’s Breach of its’ Duty of Care to Plaintiff and the other Class Members
 7 was a proximate and substantial factor in bringing about the subsequent damages. The
 8 violation of these statutes resulted from an occurrence the nature of which the Labor Code
 9 statutes were designed to prevent, and Plaintiff and the other class members were of the class
 10 of persons for whose protection the Labor Codes were adopted.
 11 37. As a direct result of Defendant 7-ELEVEN’s Breach of its’ Duty of Care, Plaintiff and the
 12 other Class Members have suffered Damages.

13

14 **THIRD CAUSE OF ACTION**

15 **Negligent Interference With Prospective Economic Advantage - Class Action** 16 **(By The Class Against Defendant 7-ELEVEN)**

- 17 38. Plaintiff hereby incorporates by reference paragraphs 1 through 37 above, as though fully set
 18 forth herein.
 19 39. Throughout the operative time period, an economic relationship existed between all Class
 20 Members and third parties, containing a future economic benefit and advantage to the Class
 21 Members. To wit, the Class as defined includes only those California based individuals who
 22 were employed by purported 7-ELEVEN Franchisees, who were “third party” entities separate
 23 and distinct from Defendant 7-ELEVEN. The future economic benefit and advantage included
 24 the total wages due, from the third parties to the Class Members, for all the work performed
 25 by the Class Members.
 26 40. At all relevant time periods, Defendant 7-ELEVEN knew of the economic relationship between
 27 the Class Members and the third party entities. In fact, 7-ELEVEN references the Class
 28 Members (as, among other terms, “Store employees”) in the “Franchise Agreements” 7-

- 1 ELEVEN entered into with each of the third parties.
- 2 41. Defendant 7-ELEVEN engaged in wrongful conduct. To wit, Defendant 7-ELEVEN required
 3 each of the third party Franchisees to use 7-ELEVEN as "Bookkeeper" Payroll Provider as a
 4 condition necessary to a continued relationship. Defendant 7-ELEVEN possessed knowledge
 5 of the time taken by each Class Member during the above referenced Meal Periods, and those
 6 specific occasions in which the time taken did not comply with the statutory requirement.
 7 Defendant 7-ELEVEN was aware of the statutory requirement to provide a Wage of One-Hour
 8 where the Meal Period was not fully provided. Despite having the responsibility of providing
 9 said Wage of One-Hour, 7-ELEVEN did not provide this wage. As a second example, 7-
 10 ELEVEN used an illegal "rounding" system of employee work time calculation, where the
 11 actual work time provided by employees would be re-configured by 7-ELEVEN, resulting in
 12 a decrease in the amount of work-time reported and paid to the Class Members. Succinctly,
 13 Defendant 7-ELEVEN failed to provide each Class Member with all monies earned and/or
 14 legally owing to the Class Members. This decrease violated State wage and hour laws,
 15 including but not limited to minimum wage and overtime requirements.
- 16 42. It was reasonably foreseeable that this wrongful conduct would interfere with or disrupt the
 17 above referenced economic relationship if Defendant 7-ELEVEN failed to exercise due care.
 18 To wit, if 7-ELEVEN failed to provide compensation to the Class Members in accordance with
 19 California law, the Class Members would (and did) receive less of an economic benefit as a
 20 result of their relationship with the third parties.
- 21 43. The economic relationship between the Class Members and the third parties was actually
 22 interfered with or disrupted. To wit, the Class Members failed to receive wages due on those
 23 occasions where said Class Members failed to receive a compliant Meal or Rest Period, and
 24 received less of an economic benefit on those occasions where Defendant 7-ELEVEN used an
 25 illegal "rounding" technique to deprive Class Members of actual hours worked.

26 //

27 //

28

44. The above described conduct caused the Class Members damage. Specifically, the Class Members lost portions of the economic benefit from the economic relationship.

FOURTH CAUSE OF ACTION
Violation of Labor Code - Class Action
(By The Class Against All Defendants)

- 6 45. Plaintiff hereby incorporates by reference paragraphs 1 through 44 above, as though fully set
7 forth herein.

8 46. California Labor Code § 226.7(a) states that “No employer shall require any employee to work
9 during any meal or rest period mandated by an applicable order of the Industrial Welfare
10 Commission.”

11 47. Under applicable state law, employees who work more than five (5) hours a day are entitled
12 to a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30)
13 minutes if they work more than ten (10) hours in a day. (Labor Code § 512(a).)

14 48. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period
15 shall be considered an “on duty” meal period and counted as time worked. Title 8, California
16 Code of Regulations Section 11070(11)(A) and (B), also known as Wage Order 4.

17 49. An employer who fails to provide meal or rest periods as required by an applicable Wage Order
18 must pay the employee one additional hour of pay at the employee’s regular rate of pay for
19 each workday that the meal or rest period was not provided. (Labor Code § 226.7(b); IWC
20 Wage Orders 1-2001 through 13-2001, 15-2001.)

21 50. During the course of her employment, Plaintiff and other employees were required by
22 Defendants to work through their lunches and perform work during their meal and rest
23 periods, and therefore, Plaintiff and other members in her class were denied relieved and off-
24 duty meal and rest periods.

25 51. Defendants willfully failed and refused to pay Plaintiff and other employees one additional
26 hour of pay at their regular rate of pay for each workday that a meal or rest period was not
27 provided as required by Labor Code Section 226.7.

- 1 52. California Labor Code § 226 states, in part, that each pay period, Defendants shall provide its
2 employees an accurate Itemized Wage Statement, showing (in part) the gross wages earned and
3 the total hours earned by each employee.
- 4 53. During the course of her employment, Plaintiff and other employees were not provided
5 statutorily compliant Itemized Wage Statements ("pay-stubs") by Defendants.
- 6 54. As a direct result of Defendants' willful failure and refusal to (a) provide the mandated meal
7 or rest period or pay one additional hour of pay at the regular rate of pay for each workday that
8 a meal or rest period was not provided, and (b) failure to comply with Labor Code section 226,
9 Plaintiff and other employees have suffered injury, loss and harm all to their damages in a sum
10 according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back
11 pay (or penalty), and prejudgement interest, and the payment of one hour of pay at the regular
12 rate of pay, for each day the Meal or Rest period was not provided.
- 13 55. California Labor Code § 510(a) states that, "Eight hours of labor constitutes a day's work. Any
14 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
15 workweek and the first eight hours worked on the seventh day of work in any one workweek
16 shall be compensated at the rate of no less than one and one-half times the regular rate of pay
17 for an employee." Further, California law requires the payment of compensation for all time
18 worked.
- 19 56. During the course of her employment, Plaintiff and other employees were not properly or
20 legally compensated, including the failure to receive compensation at one and one half (1½)
21 times their regular rate of pay for hours worked in excess of 8 hours a day and/or 40 hours a
22 week. As a result, Plaintiff and other Class Members have suffered injury, loss and harm all
23 to their damages in a sum according to proof.
- 24 57. Labor Code section 2802(a) states that, "[a]n employer shall indemnify his or her employee
25 for all necessary expenditures or losses incurred by the employee in direct consequence of the
26 discharge of his or her duties, or of his or her obedience to the directions of the employer."
- 27 58. During the course of her employment, Plaintiff and other employees were required by
28

Defendants to purchase, using their own funds, custom pants, shirts, and shoes as part of their “work uniforms.” Additionally, Plaintiff and other employees were required to clean all or part of their “work uniforms.” Plaintiff and other employees were not reimbursed by Defendants for these expenditures.

- 5 59. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
6 presently unaware of the precise amount of these expenses and fees and prays leave of court
7 to amend this Complaint when the amounts are more fully known.

FIFTH CAUSE OF ACTION
Violation of Business and Professions Code §17200 - Class Action
(By The Class Against All Defendants)

- 11 60. Plaintiff hereby incorporates by reference paragraphs 1 through 59 as though fully set forth
12 herein.

13 61. Plaintiff is a direct victim of Defendants' illegal and unfair business acts and practices
14 referenced in this complaint, and has lost money as a result of such practices, and is suing both
15 in her individual capacity and on behalf of former or current employees of Defendants and/or
16 recipients of Payroll-Processing and Bookkeeping who share a common or general interest in
17 the damages as a result of the illegal practices. Specifically, Plaintiff is bringing this claim on
18 behalf of Defendants' current and former employees and/or recipients of Payroll-Processing
19 and Bookkeeping who are/were improperly denied mandated relieved meal and rest periods and
20 required wages under Labor Code Section 226.7, denied proper compensation, including
21 minimum wage and overtime compensation under Labor Code Section 510, denied statutorily
22 compliant pay-stubs under Labor Code Section 226, and required to purchase and clean
23 uniforms using their funds, a violation of Labor Code Section 2802. The class of present and
24 former employees is believed to be approximately 5000 members.

25 62. The approximately 5000 member class is ascertainable via their experience as present or past
26 employees of Defendant 7-Eleven and/or recipients of Payroll-Processing and Bookkeeping.
27 The members share a community of interest, and an injury in fact, as Defendant 7-ELEVEN

1 has violated California compensation laws, thereby depriving the class members of money
2 earned by them. Based on the facts set forth above, it would be impracticable to proceed in
3 individual actions.

4 63. Plaintiff has suffered an injury in fact pursuant to Business and Professions Code Section
5 17204, and has lost money as a result of Defendant 7-ELEVEN's illegal practices, in that she
6 was improperly denied Wages in violation of Labor Code Section 226.7, throughout her
7 employment and experience with the Payroll-Processing/Bookkeeping of Defendants.

8 64. Plaintiff is bringing this action on behalf of an ascertainable class, who share a community of
9 interest, pursuant to Business and Professions Code Section 17203 and Code of Civil
10 Procedure Section 382, who share a common or general interest in the damages as a result of
11 the illegal practices, in that those individuals on whose behalf the action is brought have also
12 lost money as a result of Defendants' practices, by denying them proper payment of Wages
13 under Labor Code Section 226.7, denying them proper compensation, including compensation
14 under Labor Code Section 510, denying them statutorily compliant pay-stubs under Labor
15 Code Section 226, and requiring them to purchase and clean uniforms using their funds, a
16 violation of Labor Code Section 2802, and that it would be impracticable to proceed in as an
17 individual plaintiff action.

18 65. As set forth above, during the course of Plaintiff's employment, Defendants failed and refused
19 to properly pay Plaintiff, and other employees and/or Payroll-Processing Recipients, mandated
20 meal and rest periods and one hour of pay at the employees' regular rate of pay for each day
21 the meal and rest periods were not provided. (Labor Code Sections 226.7, 512; Title 8,
22 California Code of Regulations Section 11070(11)(A) and (B).) Defendants failed and refused
23 to properly pay Plaintiff, and other employees and/or Payroll-Processing Recipients overtime
24 compensation for hours worked in excess of 8 hours a day and/or 40 hours a week. (Labor
25 Code Section 510.) Defendants failed and refused to provide Plaintiff, and other employees
26 and/or Payroll-Processing Recipients statutorily compliant pay-stubs. (Labor Code Section
27 226.) Defendants improperly required Plaintiff and other employees and or Payroll-Processing
28

- 1 Recipients to purchase and clean work uniforms using their funds. (Labor Code section 2802.)
- 2 66. California Business and Professions Code § 17200 *et seq.*, prohibits any unlawful, unfair, or
3 fraudulent business act or practice.
- 4 67. Plaintiff's allegations herein are based upon the business acts and practices of the Defendants.
- 5 68. Defendants' acts and practices as described herein above are unlawful, in that they violate the
6 California Labor Code.
- 7 69. As a direct result of Defendants' unlawful business acts and practices, Plaintiff, and other
8 employees and/or Payroll-Processing Recipients, have been denied wages earned, and have
9 therefore been damaged in amount to be proven. Accordingly, Plaintiff prays for restitution
10 and injunctive damages in an amount to be proven.
- 11 70. Plaintiff is informed and believes, and on that basis alleges, that the unlawful business
12 practices alleged above are continuing in nature and are widespread practices engaged by
13 Defendants.
- 14 71. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against
15 Defendants, to enjoin them from continuing to engage in the illegal conduct alleged herein.
- 16 72. On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.
- 17 73. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
18 presently unaware of the precise amount of these expenses and fees and prays leave of court
19 to amend this Complaint when the amounts are more fully known.

20

SIXTH CAUSE OF ACTION
Violation of Labor Code Section 2699, *et seq.* - Representative Action
(By The Class Against 7-Eleven, Inc.)

- 21
74. Plaintiff hereby incorporates by reference paragraphs 1 through 73 as though fully set forth
22 herein.
75. At all times mentioned herein, Defendant 7-ELEVEN, INC. was subject to the Labor Codes
23 and Industrial Welfare Commission Wage Orders of the State of California, including, but not
24 limited to, California Labor Code section 2699, *et seq.*
76. Plaintiff Class Representative has exhausted her Administrative Remedies and pre-filing
25

1 requirements pursuant to California Labor Code section 2699.3. To wit, on June 6, 2007,
 2 counsel for Plaintiff Class Representative gave written notice, via Certified Mail, to the
 3 California Labor & Workforce Development Agency regarding the specific provisions of the
 4 California Labor Code Section violated by Defendant 7-ELEVEN, INC., as well as the facts
 5 and theories in support. (A true and correct copy of this letter is attached hereto as Exhibit
 6 "A.") On July 11, 2007, the California Labor & Workforce Development Agency sent written
 7 notice that they do not intend to investigate the claim, thus allowing Plaintiff to proceed. (A
 8 true and correct copy of this letter is attached hereto as Exhibit "B.") Further, on or about
 9 September 24, 2007, counsel for Plaintiff Class Representative gave amended written notice,
 10 via Certified Mail, to the California Labor & Workforce Development Agency regarding the
 11 specific provisions of the California Labor Code Section violated by Defendant 7-ELEVEN,
 12 INC., as well as the facts and theories in support. (A true and correct copy of this letter is
 13 attached hereto as Exhibit "C.") The statutory period for the California Labor & Workforce
 14 Development Agency to send written notice that they intend to investigate the claim has
 15 expired, thus allowing Plaintiff to proceed.

- 16 77. At all times mentioned herein, Defendant 7-ELEVEN, INC. was not only acting as an
 17 "Employer" for Plaintiff and the Class, but was also a "person acting either individually or as
 18 an officer, agent or employee of another person," as that term is used within California Labor
 19 Code sections 1197.1 and 1199.
- 20 78. California Labor Code section 1197.1 provides, in pertinent part, as follows: "Any employer
 21 or other person acting either individually or as an officer, agent or employee of another person,
 22 who pays or causes to be paid to any employee a wage less than the minimum fixed by an order
 23 of the commission shall be subject to a civil penalty as follows: (1) For any initial violation that
 24 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each
 25 pay period for which the employee is underpaid. (2) For each subsequent violation for the same
 26 specific offense, two hundred dollars (\$250) for each underpaid employee for each pay period
 27 for which the employee is underpaid regardless of whether the initial violation is intentionally
 28 committed." California Labor Code section 1199 provides, in pertinent part, as follows: "Any

- 1 employer or other person acting either individually or as an officer, agent or employee of
 2 another person is guilty of a misdemeanor and punishable by a fine of not less than one
 3 hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any
 4 of the following: (a) requires or causes an employee to work for longer hours than those fixed,
 5 or under conditions of labor prohibited by an order of the commission; (b) pays or causes to
 6 be paid to any employee a wage less than the minimum fixed by an order of the commission;
 7 c) violates or refuses or neglects to comply with any provision of this chapter or any order or
 8 ruling of the commission.”
- 9 79. Throughout the Class Period, Defendant 7-ELEVEN, INC. provided bill-paying, payroll-
 10 processing and record-keeping, in terms of financial records and wage payments, for 7-Eleven
 11 store employees, including Sales Associates. Further, Defendant 7-ELEVEN, INC. required
 12 its employees and/or its Franchisees employees to comply with various mandates of 7-
 13 ELEVEN, INC. as a condition of employment and/or continued employment.
- 14 80. Throughout the Class Period, Plaintiff and the remaining class members were not provided
 15 their legally mandated meal and rest periods, and were not provided the legally mandated
 16 payment for not receiving relieved meal and rest periods. Further, many of the conditions of
 17 employment and/or continued employment violated provisions of the Labor Code and orders
 18 of the commission.
- 19 81. The California Supreme Court, in Murphy v. Kenneth Cole (2007) 40 Cal.4th 1094, has
 20 recently confirmed that the legally mandated “Meal Period Payment” is a Wage.
- 21 82. California law holds that Minimum Wage laws apply to each and every hour worked, and that
 22 it is illegal to withhold from any employee any Wage earned by that employee. Armenta v.
 23 Osmose, Inc. (2006) 135 Cal.App.4th 314.
- 24 83. Although Defendant 7-ELEVEN, INC. possessed the opportunity and the obligation to provide
 25 this Wage to Plaintiff and the remaining Class Members, it failed to pay or cause to be paid
 26 said Wages. Defendant 7-ELEVEN, INC. thus failed to pay, or cause to be paid, the Minimum
 27 Wage to Plaintiff and the remaining Class Members. Additionally, although Defendant 7-
 28 ELEVEN, INC. possessed the opportunity and the obligation to Plaintiff and the remaining

- 1 Class Members, it failed to comply with the provisions of the Labor Code and orders of the
 2 commission, it failed to comply.
- 3 84. As a direct result of Defendant 7-Eleven Inc.'s failure to pay, or cause to be paid, the Minimum
 4 Wage to Plaintiff and the remaining Class Members, and its failure to comply with the
 5 provisions of the Labor Code and orders of the commission. Plaintiff and the remaining Class
 6 Members have been damaged.
- 7 85. As California Labor Code section 2699 provides for civil penalties recoverable by Plaintiff on
 8 behalf of herself and the Class by and through Labor Code section 2699.3, and as Plaintiff has
 9 complied with the pre-filing requirements, Plaintiff and the Class may recover the penalties
 10 pursuant to Labor Code section 2699, as more specifically set forth in the below Prayer For
 11 Relief.
- 12 86. Plaintiff and the Class also seek an award of reasonable Attorney's fees and costs pursuant to
 13 Labor Code section 2699(g)(1), and interest, pursuant to Labor Code section 218.6.
- 14

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff on her own behalf and on behalf of the members of the Class and the
 17 general public, prays for judgment as follows:

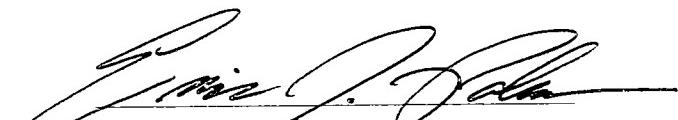
- 18 1. For an order certifying the proposed Class;
- 19 2. For compensatory damages according to proof as set forth in California Labor Code § 226,
 20 California Labor Code § 226.7, California Labor Code § 510, California Labor Code section
 21 1194 and California Labor Code § 2802, for failing to provide statutorily compliant itemized
 22 wage statements ("pay-stubs"), failing to provide proper compensation, including but not
 23 limited to minimum wage and overtime compensation, denying mandated meal and rest
 24 periods and other wages resulting from failure to count work employees performed during meal
 25 breaks as time worked, and for improperly requiring employees to purchase work uniforms
 26 using their own funds;
- 27 3. For waiting time penalties according to proof pursuant to California Labor Code § 203;
- 28

- 1 4. For civil penalties pursuant to California Labor Code §§ 2699, 201, 203, 226, 226.7, 510, 512,
 2 1174, 1174.5, 1194, 1197.1, 1199 and 226(e), and Title 8, California Code of Regulations
 3 Section 11070 Section 20.
- 4 5. For compensatory damages in an amount to be proven;
- 5 6. For lost back pay in an amount to be proven;
- 6 7. On behalf of the ascertainable class, for a permanent injunction against Defendant Employer
 7 restraining, preventing, and enjoining Defendant Employer from engaging in the illegal
 8 practices alleged, and to ensure compliance with Labor Code section 226;
- 9 8. On behalf of the ascertainable Class, for restitution damages on behalf of the Section 17200
 10 claimants who share a common or general interest;
- 11 9. For an award of interest, including prejudgement interest, pursuant to Labor Code Section
 12 218.6;
- 13 10. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code Sections 2699
 14 *et seq.*, 226, 2802, 1194 and 218.
- 15 11. For an award of punitive and exemplary damages where permissible; and
- 16 12. For such other relief as the court deems just and proper.
- 17

18

19 Dated: 12/11/07

SULLIVAN & CHRISTIANI, LLP



20

21

22 William B. Sullivan,
 23 Eric J. Palmer,
 24 Attorneys for Plaintiff KIMBERLY ALEKSICK
 25 individually and on behalf of other members of
 26 The general public similarly situated

27

28

EXHIBIT L

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL**

FOR COURT USE ONLY

FILED

Plaintiff/Petitioner: Kimberly Alecksick

DEC 21 2007

Defendant/Respondent: 7 Eleven, Inc., et al.

SUPERIOR COURT
IMPERIAL COUNTY CA.
JOHN O. QUILLIN, CLERK
BY *[Signature]* DEPUTY

CASE MANAGEMENT ORDER

CASE NO. ECU03615

The court has reviewed the case management statement(s) of Plaintiff(s) Defendant(s)
 Cross-complainant(s) Cross-defendant(s) Other: _____

The Court orders/finds:

- The case management conference scheduled herein is vacated.
 The case management conference was held on _____.
 The case management conference is continued to 02/11/2008 at 8:30am in Department 7.

 CASE DESIGNATION:

- The court finds that the case is amenable to disposition within 12 months 18 months 24 months of the filing of the Complaint.
 The court finds that the case is exempt from differential case management pursuant to California Rules of Court, Rule 209(d).

 ARBITRATION:

- The court finds that the case is amenable to arbitration. The case is referred to arbitration, with arbitration to be completed by _____.
 The court finds the case to be exempt from arbitration.

 TRIAL:

- The matter is set for a jury court trial on _____. A jury trial is demanded by plaintiff(s) defendant(s) Other: _____.
 A Settlement Conference shall be held on _____.
 A Trial Management Conference is set for _____.
 The case is not ready to be set for trial because:
 All parties have not appeared or been defaulted.
 Other: _____

 Other: _____.

IT IS SO ORDERED.

Dated: 12-21-07


JUDGE OF THE SUPERIOR COURT

EXHIBIT M

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6 Eric A. Welter (Virginia Bar No. 38193)
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8 Herndon, VA 20170
Telephone: (703) 435-8500
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9 Attorneys for Defendant
7-ELEVEN, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL**

KIMBERLY ALEKSICK, individually and on behalf of other members of the general public similarly situated.

Plaintiff.

V.

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and DOES
1-50, inclusive.

Defendants.

CASE NO. ECU03615

Assigned for All Purposes to:
Judge: The Hon. Christopher Yeager
Department: 7

**ANSWER OF DEFENDANT 7-ELEVEN,
INC. TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Date Action Filed: April 16, 2007
Trial Date: None Set

GENERAL DENIAL

Defendant 7-Eleven, Inc. (“Defendant”) for itself and for no other defendant, denies, generally and specifically, each and every allegation contained in the First Amended Complaint for Damages filed herein by Plaintiff Kimberly Aleksick (“Plaintiff”). Defendant further denies, generally and specifically, that Plaintiff has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendant or on the part of any agent or employee of Defendant, or any of them.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The First Amended Complaint, and each alleged cause of action therein, fails to state sufficient facts to constitute a claim upon which relief may be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. The First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, by the applicable statutes of limitation, including but not limited to Code of Civil Procedure §§ 338(a), 340(a), 340 (b) and 343; Labor Code §§ 203; and Business and Professions Code § 17208.

THIRD AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

3. The First Amended Complaint, and each cause of action alleged therein, is barred because Plaintiff failed to satisfy the procedural prerequisites prior to filing the action or to exhaust available administrative remedies in a timely manner.

FOURTH AFFIRMATIVE DEFENSE

(Proper Compensation)

4. Defendant is informed and believes that Plaintiff's claims are barred in whole or in part because at all times mentioned in the First Amended Complaint, Plaintiff was compensated properly pursuant to the requirements contained in the California Labor Code and the Wage Orders of the California Industrial Welfare Commission.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Standing)

5. Plaintiff, as a private litigant, lacks standing to bring a claim for damages under California Business and Professions Code section 17200 *et seq.*

SIXTH AFFIRMATIVE DEFENSE

(Good Faith Belief)

6. The First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, because Defendant did not employ Plaintiff, and even if Defendant had employed Plaintiff, Defendant acted in good faith conformity with and reliance on regulations, orders, rulings interpretations, practices or policies of the California Industrial Welfare Commission and the California Division of Labor Standards Enforcement.

SEVENTH AFFIRMATIVE DEFENSE

(Legitimate Business Reason)

7. The First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, because each employment action of which Plaintiff complains, if it occurred at all, was taken for legitimate business reasons that did not violate public policy or any statutory prohibition.

EIGHTH AFFIRMATIVE DEFENSE

(Justification)

8. Plaintiff's First Amended Complaint, and each cause of action alleged therein, is barred because Defendant's actions with respect to the subject matter in each of the alleged causes of action was undertaken in good faith and for good cause, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further Defendant's purpose to engage in and continue their business activities.

NINTH AFFIRMATIVE DEFENSE

(No Ratification)

9. Defendant is not liable for damages because if any person engaged in intentional, willful or unlawful conduct as alleged in Plaintiff's First Amended Complaint, he or she did so without the knowledge, authorization or ratification of Defendant.

TENTH AFFIRMATIVE DEFENSE

(No Commonality)

10. The First Amended Complaint, and each alleged cause of action therein, is not proper for treatment as a class action because, among other reasons: (a) Plaintiff has not identified an ascertainable class; (b) Plaintiff is an inadequate representative of the purported class; (c) Plaintiff cannot establish typicality of claims; and (d) the individualized nature of the putative class's claims make class treatment inappropriate.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

11. The First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, by Plaintiff's failure to mitigate damages as required by law.

TWELFTH AFFIRMATIVE DEFENSE

(Offset)

12. Plaintiff's damages, if any, must be reduced by amounts Plaintiff owes to Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

(Uncertainty)

13. Plaintiff's losses, if any, are speculative and uncertain or both, and therefore not compensable.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Punitive or Exemplary Damages)

14. Plaintiff's prayer for punitive and exemplary damages is barred on the ground that punitive and exemplary damages are not available under the statutory causes of action pled by Plaintiff. Even if they were available, the acts or omissions alleged by Plaintiff were made in good faith by Defendant, and Defendant had reasonable grounds for believing that the alleged acts or omissions were not in violation of the California Labor Code, and therefore no punitive or exemplary damages are available.

FIFTEENTH AFFIRMATIVE DEFENSE

(Causation by Plaintiff)

15. Plaintiff's First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, because any damages or injuries that Plaintiff allegedly suffered were caused by Plaintiff's own conduct and actions, and not because of any unlawful conduct or actions by Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

(Lack of Proximate Cause and Failure To Exercise Ordinary Care by Plaintiff)

16. If any loss, injury, damage or detriment occurred as alleged in the Complaint, the loss, injury, damage or detriment was caused and contributed to by the actions of Plaintiff, and, as Plaintiff did not exercise ordinary care on her own behalf, her own acts and omissions proximately caused and contributed to the loss, injury, damage or detriment alleged by Plaintiff and Plaintiff's recovery from Defendants, if any, should be reduced in proportion to the percentage of Plaintiff's negligence or fault.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Duty)

17. Plaintiff's First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, because Defendant did not owe any duty to Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No Breach)

18. Plaintiff's First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, because Defendant did not breach any duty with respect to Plaintiff.

NINETEENTH AFFIRMATIVE DEFENSE

(Breach of Loyalty/Bad Faith)

19. Plaintiff's First Amended Complaint, and each alleged cause of action therein, is barred, in whole or in part, because Defendant acted in bad faith and breached her duty of loyalty under Labor Code §§ 2860, 2861 and 2863.

TWENTIETH AFFIRMATIVE DEFENSE

(No Representative Action)

20. Plaintiff's claim under Labor Code § 2699 is barred, in whole or in part, because such a claim may only be pled as a class action.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Unclean Hands)

21. The First Amended Complaint, and each alleged cause of action therein, is barred by the doctrine of unclean hands because of Plaintiff's conduct and actions.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Estoppel)

22. Plaintiff's First Amended Complaint, and each cause of action alleged therein, is barred because Plaintiff is estopped from asserting each of the claims alleged therein.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Waiver)

23. Plaintiff's First Amended Complaint, and each cause of action alleged therein, is barred because Plaintiff has waived the right, by reason of her conduct and actions, to assert each of the claims alleged herein.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Laches)

24. Plaintiff's First Amended Complaint, and each cause of action alleged therein, is barred by the doctrine of laches.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence Doctrine)

25. Plaintiff's alleged causes of action, and each of them, and Plaintiff's claims for damages, back wages and penalties may be barred by after acquired evidence of misconduct by Plaintiff.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Liability for Acts of Other Defendants)

26. Defendant is not liable for the alleged acts of Michael Tucker and Tuckers 7-Eleven on the grounds that Tuckers 7-Eleven and Michael Tucker are independent contractors and are not employees or agents of Defendant.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Plaintiff Not Employed by Defendant)

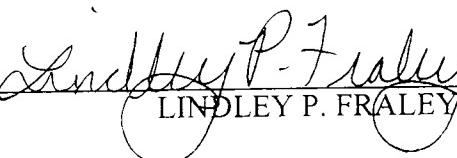
27. Plaintiff's alleged causes of action, and each of them, against 7-Eleven, Inc. are barred on the grounds that 7-Eleven Inc. did not employ Plaintiff or any putative class member.

1 WHEREFORE, Defendant prays for judgment as follows:

- 2
- 3 1. That judgment be entered in favor of Defendant and against Plaintiff;
- 4
- 5 2. That the Complaint herein be dismissed in its entirety with prejudice;
- 6
- 7 3. That Defendant be awarded its costs of suit herein;
- 8
- 9 4. That Defendant be awarded reasonable attorney's fees as determined by the
- 10 Court; and
- 11
- 12 5. For such other and further relief as the Court may deem just and proper.

14 DATED: January 9, 2007

PAYNE & FEARS LLP

15 By: 

16 LINDLEY P. FRALEY

17 Attorneys for Defendant
7-ELEVEN, INC.

EXHIBIT N

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPT. 10A

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18 Attorneys for Defendant
19 7-ELEVEN, INC.

20
21 UNITED STATES DISTRICT COURT
22 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

23 KIMBERLY ALEKSICK,
24 individually and on behalf of other
members of the general public
similarly situated,

Plaintiffs,

v.

25 7-ELEVEN, INC., a Texas
26 Corporation, MICHAEL TUCKER;
27 an individual; and DOES 1-50,
28 Inclusive,

Defendants.

CASE NO. **08 CV 0059 J WMC**

PETITION AND NOTICE OF
REMOVAL OF CIVIL ACTION
UNDER 28 U.S.C. §§ 1332, 1441 AND
1446

29 Defendant 7-Eleven, Inc. ("7-Eleven") hereby gives notice pursuant to 28
30 U.S.C. §§ 1332, 1441 and 1446 of the removal to this Court of the action

1 commenced against it in the Superior Court of the State of California, County of
 2 Imperial, styled Kimberly Aleksick v. 7-Eleven, Inc., et al. (ECU03615) ("State
 3 Court Action"). The following facts support this removal:

4 **PROCEDURAL HISTORY**

5 1. On or about April 16, 2007, Plaintiff Kimberly Aleksick ("Plaintiff")
 6 filed a Complaint against 7-Eleven and its franchisee Michael Tucker in the
 7 Superior Court for the State of California, County of Imperial. Attached hereto as
 8 Exhibit "A" is a true and correct copy of the Complaint, Civil Case Cover Sheet
 9 and Summons.

10 2. On June 1, 2007, 7-Eleven filed its Answer to the Complaint.
 11 Attached hereto as Exhibit "B" is a true and correct copy of 7-Eleven's Answer.

12 3. The Superior Court noticed a Case Management Conference for
 13 August 14, 2007. Attached hereto as Exhibit "C" is a true and correct copy of the
 14 Court's Notice.

15 4. The Court continued the Case Management Conference to August 23,
 16 2007 in an Order dated August 8, 2007. Attached hereto as Exhibit "D" is a true
 17 and correct copy of the Court's Order.

18 5. On July 11, 2007, 7-Eleven filed a *Pro Hac Vice* Application for the
 19 admission of Eric A. Welter. Attached hereto as Exhibit "E" is a true and correct
 20 copy of the Application.

21 6. On July 17, 2007, 7-Eleven filed a Case Management Statement.
 22 Attached hereto as Exhibit "F" is a true and correct copy of the Statement.

23 7. On July 18, 2007, Plaintiff's counsel filed a Notice of Plaintiff's
 24 Counsel's Unavailability to Appear at the Case Management Conference and
 25 Request to Continue the CMC, along with a Proposed Order granting the Request.
 26 Attached hereto as Exhibit "G" is a true and correct copy of the Notice, Request,
 27 and Proposed Order.

1 8. On July 19, 2007, Defendant Michael Tucker filed an Answer to
2 Plaintiff's Complaint. Attached hereto as Exhibit "H" is a true and correct copy of
3 Mr. Tucker's Answer.

4 9. On July 19, 2007, Plaintiff filed a Notice of No Opposition to the *Pro*
5 *Hac Vice* Application for Eric A. Welter. Attached hereto as Exhibit "I" is a true
6 and correct copy of the Notice.

7 10. On July 25, 2007, Plaintiff filed a Case Management Statement for the
8 Case Management Conference on August 14, 2007. Attached hereto as Exhibit "J"
9 is a true and correct copy of the Statement.

10 11. On July 31, 2007, Defendant Michael Tucker filed a Case
11 Management Statement for the Case Management Conference on August 14, 2007.
12 Attached hereto as Exhibit "K" is a true and correct copy of the Statement.

13 12. On August 1, 2007, the Court issued a Notice of Hearing for the *Pro*
14 *Hac Vice* Application of Eric A. Welter. Attached hereto as Exhibit "L" is a true
15 and correct copy of the Notice of Hearing.

16 13. On August 8, 2007, 7-Eleven filed a Notice of Intent to Appear at the
17 Case Management Conference by Telephone. Attached hereto as Exhibit "M" is a
18 true and correct copy of the Notice.

19 14. On August 8, 2007, the Court issued an Order continuing the Case
20 Management Conference to August 23, 2007. Attached hereto as Exhibit "N" is a
21 true and correct copy of the Court's Order.

22 15. On August 23, 2007, the Court issued a Case Management Order
23 setting a Case Management Conference for September 25, 2007. Attached hereto
24 as Exhibit "O" is a true and correct copy of the Court's Case Management Order.

25 16. 7-Eleven provided notice of the Class Action Case Conference to all
26 Parties. Attached hereto as Exhibit "P" is a true and correct copy of the Notice of
27 Class Action Case Conference.

1 17. On September 6, 2007, attorneys for Michael Tucker provided a
2 Notice of Change of Firm Name. Attached hereto as Exhibit "Q" is a true and
3 correct copy of the Notice of Change of Firm Name.

4 18. On September 12, 2007, 7-Eleven filed a Case Management
5 Statement. Attached hereto as Exhibit "R" is a true and correct copy of the Case
6 Management Statement.

7 19. On September 12, 2007, the Court granted Eric A. Welter's *Pro Hac*
8 *Vice* Application. Attached hereto as Exhibit "S" is a true and correct copy of the
9 Court's Order.

10 20. On September 25, 2007, the Court issued a Case Management Order
11 setting a Case Management Conference for December 21, 2007. Attached hereto
12 as Exhibit "T" is a true and correct copy of the Court's Order.

13 21. On December 4, 2007, 7-Eleven filed a Case Management Statement
14 and a Notice of Intent to Appear Telephonically. Attached hereto as Exhibit "U" is
15 a true and correct copy of the Case Management Statement and Notice.

16 22. On December 5, 2007, Defendant Michael Tucker filed a Case
17 Management Statement. Attached hereto as Exhibit "V" is a true and correct copy
18 of the Statement.

19 23. On December 17, 2007, Plaintiff filed an *Ex Parte* Application for an
20 Order Compelling "Pioneer/Belaire" Notice, or in the Alternative, For An Order
21 Shortening Time To Hear Plaintiff's Request for an Order Compelling
22 "Pioneer/Belaire" Notice. Attached hereto as Exhibit "W" is a true and correct
23 copy of the Application.

24 24. On December 13, 2007, Plaintiff's counsel faxed to counsel for 7-
25 Eleven Plaintiff's First Amended Complaint ("FAC"). Attached hereto as Exhibit
26 "X" is a true and correct copy of the FAC.

27 25. On January 9, 2008, 7-Eleven timely filed an answer to Plaintiff's
28 FAC. Attached hereto as Exhibit "Y" is a true and correct copy of the Answer.

26. Exhibits "A" through "Y" hereto constitute the pleadings, process and orders served upon or by 7-Eleven in the State Court Action.

JURISDICTION

27. The original Complaint contained several causes of action based on alleged violations of the California Labor Code by Tucker. Count 1 alleged violations of the California Labor Code by Tucker for failure to provide meal or rest breaks, failure to pay overtime compensation, requiring employees to pay for uniforms, and noncompliant wage stubs. Count 2 alleged a claim under Business and Professions Code section 17200 for the same alleged violations.

28. The original Complaint did not state a federal question and was not removable on the basis of diversity jurisdiction because Tucker is a resident of California.

29. The original Complaint was not removable under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Plaintiff’s original Complaint framed the putative class as “Plaintiff and her former co-workers” (*Compl.* ¶ 10) and “Plaintiff and similarly situated employees” (*Compl.* ¶ 11). Plaintiff was an employee of franchisee Michael Tucker. Even assuming that 7-Eleven was found to be Plaintiff’s “employer,” which was extremely unlikely under California law (see ¶ 4 below), there was no legal basis in the original Complaint to extrapolate the putative class to franchisees other than Michael Tucker. As such, Plaintiff’s “co-workers” would not likely have numbered over the 100 required for jurisdiction under the CAFA nor would 7-Eleven have been able to establish an amount in controversy greater than \$5,000,000 as required by the CAFA.

30. The claims in the original Complaint were all premised upon alleged Labor Code violations by 7-Eleven's franchisee, Michael Tucker. The California courts have repeatedly upheld the independent contractor relationship between 7-Eleven and its franchisees, holding that 7-Eleven is not the employer of its

1 franchisee's employees nor is it an agent of the franchisee. Singh v. 7-Eleven, Inc.,
 2 2007 WL 715488 (N.D.Cal. 2007); Cislaw v. Southland Corp., 4 Cal.App.4th 1284
 3 (1992); Wickham v. Southland Corp., 168 Cal.App.3d 49 (1985); see also
 4 Chelkova v. Southland Corp., 771 N.E.2d 1100 (Ill. App. 2002); Daves v.
 5 Southland Corp., 2000 WL 60199 (Wash. App. 2000); Hatcher v. Augustus, 956
 6 F.Supp. 387 (E.D.N.Y. 1997). Indeed, there is a paucity of reported decisions
 7 nationwide holding franchisors liable for the wage and hour violations of its
 8 franchisee. See, e.g., Howell v. Chick-Fil-A, Inc., 1993 WL 603296, *2 n.2
 9 (N.D.Fla. 1993) (noting in FLSA case brought by employee of franchisee against
 10 franchisor that that court has "not discovered a reported case in which a franchisor
 11 has been held liable to an employee of an independent contractor."). Thus, given
 12 that the original Complaint involved at most two 7-Eleven stores operated by
 13 franchisee Michael Tucker, the original Complaint did not satisfy the jurisdictional
 14 limits under the CAFA.

15 31. On December 17, 2007, 7-Eleven received Plaintiff's First Amended
 16 Complaint by facsimile.

17 32. The First Amended Complaint is a substantially new complaint. It
 18 includes new claims against 7-Eleven that are fundamentally different from those
 19 in the original Complaint. The new claims include negligence, negligence per se,
 20 and negligent interference with prospective economic advantage, and a claim for
 21 penalties under California Labor Code section 2699.

22 33. Plaintiff's "negligence" claims seek to impose direct liability on
 23 7-Eleven for its practices in providing payroll services to its franchisees. Thus, the
 24 "negligence" claims do not depend on a finding that 7-Eleven was Plaintiff's
 25 "employer." These claims, for the first time, potentially implicate all of 7-Eleven's
 26 approximately 1,200 franchise stores in California.

27 34. Removal here is governed by 28 U.S.C. § 1446(b). Section 1446(b)
 28 provides, in pertinent part, "[i]f the case stated by the initial pleading is not

1 removable, a notice of removal may be filed within thirty days after receipt by the
 2 defendant, through service or otherwise, of a copy of an amended pleading,
 3 motion, order or other paper from which it may first be ascertained that the case is
 4 one which is or has become removable.”

5 35. The three “negligence” claims asserted directly against 7-Eleven in
 6 the First Amended Complaint are not dependent upon 7-Eleven’s status as an
 7 “employer.” Rather, the First Amended Complaint asserts a completely new
 8 theory of liability directly against 7-Eleven: that 7-Eleven acted negligently in
 9 operating its payroll system for its franchisees. (*See, e.g., First Amd. Compl.*
 10 ¶¶ 22, 24-25). As discussed in more detail below, the First Amended Complaint is
 11 an amended pleading from which it may first be ascertained that the case is
 12 removable, and 7-Eleven has filed this removal within thirty (30) days of its
 13 receipt.

14 36. The State Court Action is a civil action of which this Court has
 15 original jurisdiction under 28 U.S.C. § 1332(d), and is one which may be removed
 16 to this Court by 7-Eleven pursuant to 28 U.S.C. § 1441, in that:

- 17 a. 7-Eleven is a corporation incorporated in and under the laws of the
 18 State of Texas, and it is and has been at all material times a citizen of
 19 that state. 7-Eleven’s corporate headquarters and principal place of
 20 business is in Dallas, Texas. 7-Eleven is not a citizen of the State of
 21 California. (*See First Amd. Compl.* ¶ 5).
- 22 b. Plaintiff is a resident of the State of California. (*First Amd. Compl.* ¶
 23 4).
- 24 c. According to Plaintiff, the potential class consists of 5,000
 25 individuals. (*First Amd. Comp.* ¶ 11). Assuming that the putative
 26 class now includes the employees of 7-Eleven’s approximately 1,200
 27 franchise stores in California (which the original Complaint could not
 28 have), 7-Eleven’s records indicate there were approximately 19,000

1 individuals employed by its franchisees in California for some period
 2 of time during 2006.

3 d. The matter in controversy exceeds the sum or value of \$5,000,000,
 4 exclusive of interest and costs. To determine the amount in
 5 controversy, the Court “must assume that the allegations in the
 6 complaint are true.” Forever Living Prods. U.S. Inc. v. Geyman, 471
 7 F.Supp.2d 980, 986 (D.Ariz. 2006); Kenneth Rothschild Trust v.
 8 Morgan Stanley Dean Witter, 199 F.Supp.2d 993, 1001 (C.D.Cal.
 9 2002).

10 (a) Plaintiff alleges that the potential class consists of 5,000
 11 individuals, “100%” of whom were denied meal and rest
 12 breaks and not provided the mandated payment required by
 13 law. (*FAC*, ¶¶ 11, 14A).

14 1. Under Plaintiff’s sixth claim for relief under California
 15 Labor Code section 2699, an employer is liable for a
 16 \$100 penalty for the initial violation and \$200 for each
 17 subsequent violation. The relevant limitations period for
 18 this claim is one year. Cal. Code Civ. Proc. § 340.
 19 Assuming that Plaintiff’s allegation that 100% of the
 20 class was denied the meal and rest breaks during each
 21 work week during the one year limitations period, the
 22 potential damages on this claim amounts to \$51,500,000
 23 ($5,000 * \$100 + 5,000 * \$200 * 51$).

24 2. The minimum wage in California during a substantial
 25 part of the potential class period here was \$6.75. The
 26 relevant limitations period on Plaintiff’s section 17200
 27 restitution claim is four years. California Bus. & Prof.
 28 Code § 17208. Based on Plaintiff’s allegations that

1 “100%” of the employees in California were deprived of
2 meal and rest breaks and not paid the hour of pay due
3 each week due to 7-Eleven’s payroll system, the potential
4 damages on that claim would amount to \$7,020,000
5 (\$6.75 a week * 52 weeks * 5,000 putative class
6 members* 4 years).

7 (b) 7-Eleven’s records indicate that there were approximately
8 19,000 individuals employed by its 1,215 franchise stores
9 in California in 2006 and that the average hourly wage of
10 those individuals as of February 2007 was \$8.48.

11 1. Looking again at Plaintiff’s claim under California Labor
12 Code § 2699, assuming only two violations per putative
13 plaintiff during the one-year limitations period, the
14 potential damages on this claim alone would amount to
15 \$5,700,000 (19,000 * 300).

16 2. Looking at Plaintiff’s meal and rest break claim,
17 assuming that the putative class members were not paid
18 the statutorily required one-hour of pay for each week
19 during the year prior to the commencement of this case,
20 the potential damages on this claim would amount to
21 \$8,378,240 (19,000 * 52 * 8.48).

22 e. 7-Eleven has established the elements necessary for removal under the
23 CAFA, 28 U.S.C. § 1332(d).

24 37. The United States District Court for the Southern District of
25 California, San Diego Division, is the District Court of the United States and the
26 Division thereof embracing the place where the State Court Action is pending prior
27 to removal.

CONCLUSION

38. Because 7-Eleven has established the necessary elements for removal pursuant to 28 U.S.C. § 1332(d), 7-Eleven respectfully requests that this Court exercise its removal jurisdiction over this action.

DATED: January 10, 2008 PAYNE & FEARS LLP

PAYNE & FEARS LLP

By: Lindley P. Fraley
LINDLEY P. FRALEY

Attorneys for Defendant
7-ELEVEN, INC.

381800

EXHIBIT O

SULLIVAN & CHRISTIANI

A LIMITED LIABILITY PARTNERSHIP

NORTHERN CALIFORNIA

1 CEDARWOOD LANE
MILL VALLEY, CA 94941
PHONE 415-383-6151
FACSIMILE 415-888-3038

2330 Third Avenue
San Diego, California 92101
PHONE (619) 702-6760
FACSIMILE (619) 702-6761

LAS VEGAS

1610 SOUTH TENTH STREET
LAS VEGAS, NEVADA 89104
PHONE 702-382-2107
FACSIMILE 702-382-2016

January 18, 2008

Eric A. Welter, Esq. (Virginia)
WELTER LAW FIRM, P.C.
720 Lynn Street, Suite B
Herndon, VA 20170

Via Facsimile Only: (703) 435-8851

Re: Kimberly Aleksick v. 7-Eleven, Inc.
Case No.: ECU03615

Dear Mr. Welter:

Please allow this correspondence to serve as a "meet and confer" in the above referenced matter, with specific regard to the Notice of Removal recently filed on behalf of your client. Thank you for your assistance throughout this litigation.

Upon receipt of the Notice of Removal, we subsequently contacted your "local counsel" to request clarification as to the filing and service. Within that communication, we questioned whether counsel would consider a "meet and confer" regarding the deficiencies within the Removal, and were directed to your office.

Respectfully, your Notice of Removal is deficient on its face, given the admissions and correct citations to controlling law. As such, we ask that you withdraw the Removal, and request that the matter be sent back to the Imperial County Superior Court. Please understand that the delay inherent within a Removal and subsequent Remand will increase the damage potential (on interest alone) tens of thousands of dollars. Additionally, while Plaintiff will not seek sanctions (due to your prior professional courtesy in this matter), the Court has discretion to do so on many grounds, including "frivolous filing."

As the 7-ELEVEN Notice of Removal specifically states: "the Court 'must assume the allegations in the complaint are true.' Forever Living Prods. U.S. Inc. v. Geyman 471 F.Supp 980, 986 (D.Ariz. 2006); Kenneth Rothschild Trust v. Morgan Stanley Dean Witter 199 F.Supp. 993, 1001 (C.D. Cal.2002)."

In fact, the standard is even more clear: "In measuring the amount in controversy, a court must assume that the allegations in the complaint are true *and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.*" Kenneth Rothschild Trust v. Morgan Stanley Dean Witter, 199 F. Supp.2d 993 (C.D. Cal. 2002); Forever Living Products U.S. Inc. v. Geyman, 471 F. Supp. 2d 980, 986 (D. Ariz. 2006). (Emphasis Added).

Succinctly, 7-ELEVEN is alleged to be an employer in the original Complaint. As such, it must be assumed that such an allegation is true, and that the jury will return a verdict for Plaintiff on this claim.

Your recitation to the fact that in "prior cases" - which have not been prosecuted by Plaintiff, or this firm - a Court has not found 7-ELEVEN to be an "employer" does not relieve your obligation to assume our allegations as true.

Further, please note that the allegations within the Complaint and First Amended Complaint - with respect to, for example, the "Meal Period Claim" - are *identical*, with the only difference being a citation to a different IWC Wage Order.

Thus, given the above law, and the calculations 7-ELEVEN itself provides within the Notice of Removal, it is clear the Removal should have taken place following receipt of the *original* Complaint.

Additionally, recent controlling 9th Circuit Appellate law has confirmed that a Removal petition is untimely where "other papers" placed the Removing Party on notice of the "amount in controversy." Babasa v. Lenscrafters (9th Circuit 2007) 498 F.3d. 972. A simple review of your file will establish that 7-ELEVEN, your office, and the office of your local counsel have been provided multiple correspondence providing the parameters of the claim.

Given the above, we must respectfully state that the Notice of Removal is patently deficient, and should be withdrawn. As such, we request that you confirm, by **Thursday, January 14, 2008; Noon**, that your client will be withdrawing the Notice of Removal. Barring such confirmation, please understand that Plaintiff will file a Motion to Remand, seeking all available remedies (with the exception of a sanctions request, as explained above). Additionally, if we are required to file a Motion to Remand, we will be attaching this "meet and confer" letter as an exhibit.

Again, thank you for your assistance throughout this matter. Should you have any questions or comments, please do not hesitate to contact my office.

Very truly yours,



Eric J. Palmer

cc: William B. Sullivan

EXHIBIT P

WELTER LAW FIRM, P.C.

DIRECT DIAL 703.435.8809
EAW@WELTERLAW.COM

ERIC A. WELTER
ADMITTED IN VA, MD, DC, MN
MICHAEL K. WILSON
ADMITTED IN VA

January 22, 2008

VIA FACSIMILE AND FIRST CLASS MAIL

Eric J. Palmer, Esq.
Sullivan & Christiani LLP
2330 Third Avenue
San Diego, California 92101

Aleksick v. 7-Eleven, Inc., et al.
No. 08-00059 (S.D.Cal.)

Dear Mr. Palmer:

Thank you for your meet-and-confer letter dated January 18, 2007, which we received yesterday by facsimile. We respectfully disagree with your conclusion that the removal of this action is factually or legally deficient. The removal is most certainly not "frivolous." We believe removal was appropriate. If you have grounds to seek remand of the case to state court then the federal court will have to make that determination.

I also wanted to mention that the removal of the case to federal court has terminated 7-Eleven's duty to respond to your outstanding state court discovery requests, specifically Plaintiff's Request for Admissions, Set Four, and Form Interrogatories Employment Law, Set Two. *See, e.g., Riley v. Walgreen Co.*, 233 F.R.D. 496 (S.D.Tex. 2005). In addition, the *Early Neutral Evaluation Order* entered by the Court has stayed all discovery in the case. We can meet-and-confer about how to handle the outstanding discovery at an appropriate time in the future.

Thank you for your continued cooperation and professionalism.

Sincerely,

Eric A. Welter

cc: Eric C. Sohlgren, Esq.

William B. Sullivan [CSB No. 171637]
Alison M. Miceli [CSB No. 243131]
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff KIMBERLY ALEKSICK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ALEKSICK, individually and) **CASE NO. 08-CV-59**
on behalf of other members of the general)
public similarly situated.) **(CLASS ACTION)**

Plaintiff.)
)
CERTIFICATION OF SERVICE

v.) *Oral Argument Requested*

) Document Electronically Filed

7-ELEVEN, INC., a Texas Corporation;)
MICHAEL TUCKER, an individual; and)
Does 1 through 50, Inclusive.) Date: March 3, 2008

Defendants.) Dept: 12

I, Alison M. Miceli, hereby certify that on January 24, 2008, the following documents were electronically filed with the Clerk of the Court on behalf of, Plaintiff KIMBERLY ALEKSICK:

1. Notice of Motion to Remand to State Court;
 2. Plaintiff's Memorandum of Points and Authorities in Support of the Motion to Remand to State Court;
 3. Declaration of Alison M. Miceli, Esq. in Support of the Motion to Remand to State Court;
 4. Notice of Lodgement; and
 5. Certificate of Service.

ORIGINAL

I further certify that true and correct copies of the foregoing documents along with accompanying exhibits were served via US mail upon:

Eric C. Sohlgren, Esq.
Lindley P. Fraley, Esq.
Payne & Fears, LLP
4 Park Plaza, Suite 1100
Irvine, CA 92614

Eric A. Welter, Esq.
Welter Law Firm, P.C.
720 Lynn Street, Suite B
Herndon, VA 20170

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: January 24, 2008

SULLIVAN & CHRISTIANI, LLP

William B. Sullivan,
Alison M. Miceli,
Attorneys for Plaintiff,
KIMBERLY ALEKSICK